

**SETTLEMENT OF ELECTION OFFENCES IN FOUR SOUTHEAST  
ASIAN COUNTRIES (WITH SPECIAL REFERENCE TO THE  
INDONESIAN GENERAL ELECTIONS)**



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A thesis submitted in fulfillment of the requirements for the degree of  
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## 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 a 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 criminal 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 on 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 a 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 protection as provided in international standards. The international standards provide a minimum benchmark to which all countries should aspire.

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## CONTENTS

	Page
Abstract.....	i
Acknowledgement.....	iii
Contents.....	v
List of Tables.....	viii
List of Figures.....	ix
Table of Cases.....	x
Table of Statutes.....	xiii
List of Abbreviations.....	xx
<b>Chapter 1</b>	
Introduction.....	
1.1 Background.....	1
1.2 Problem Identification.....	3
1.3 Scope of Research.....	3
1.4 Methodology.....	4
1.5 Literature Review.....	7
1.6 Structure.....	17
<b>Chapter 2</b>	
International Standards on Elections.....	
2.1 Free and Fair Elections.....	19
2.2 Sources of International Standards on Elections.....	22
2.3 Compliance and Enforcement of Electoral Law.....	41
<b>Chapter 3</b>	
The Legal Framework of Elections.....	
3.1 Historical and Political Background.....	48
3.1.1 Elections in Indonesia.....	49
3.1.2 Elections in Malaysia.....	56
3.1.3 Elections in Singapore.....	64
3.1.4 Elections in the Philippines.....	70
3.1.5 Different Political Background of Elections.....	77
3.2 Overview toward Legal Framework of Elections.....	79
3.2.1 Legal Framework of Elections in Indonesia.....	80
3.2.2 Legal Framework of Elections in Malaysia.....	83
3.2.3 Legal Framework of Elections in Singapore.....	85
3.2.4 Legal Framework of Elections in the Philippines.....	86
3.2.5 Pattern of Legal Framework.....	89
	v

3.3 Other Issues in the Legal Framework: Electoral System and Electoral Management Bodies .....	92
3.4 Legal Framework of Elections: Improvement in the Future .....	96
<b>Chapter 4</b>	
Election Offences .....	98
4.1 Purpose of Creating Provisions on Election Offences .....	98
4.2 Definition and Scope of Election Offences .....	100
4.3 Election Offences in Indonesia .....	105
4.4 Election Offences in Malaysia .....	110
4.5 Election Offences in Singapore .....	112
4.6 Election Offences in the Philippines .....	113
4.7 Comparison of Election Offences Scope .....	119
4.8 Corrupt Practice of Bribery .....	121
4.9 Comparison and Future Directions .....	126
4.10 Two Issues in Bribery .....	136
4.10.1 Distribution of Money .....	137
4.10.2 Promise to Give Contribution .....	143
4.11 Arrangement of Election Offences .....	145
4.12 Pattern of Election Offences Arrangement .....	148
4.13 Lessons Learnt .....	151
4.14 Criminal Process and Election Petition .....	154
<b>Chapter 5</b>	
Settlement of Election Offences through the Criminal Process .....	157
5.1 Substantive Aspect: Implication of Conviction .....	157
5.1.1 Implication of Conviction in Indonesia .....	157
5.1.2 Implication of Conviction in Malaysia .....	163
5.1.3 Implication of Conviction in Singapore .....	165
5.1.4 Implication of Conviction in the Philippines .....	167
5.1.5 Comparison and Patterns on Implications of Election Offences .....	169
5.2 Procedural Aspects .....	174
5.2.1 Electoral Management Bodies and Criminal Justice System (CJS) .....	174
5.2.1.1 Role of Electoral Management Bodies and CJS in Indonesia .....	174
5.2.1.2 Role of Electoral Management Bodies and CJS in Malaysia .....	183
5.2.1.3 Role of Electoral Management Bodies and CJS in Singapore .....	193
5.2.1.4 Role of Electoral Management Bodies and CJS in the Philippines .....	198
5.2.2 Burden and Standard of Proof .....	206
5.2.3 Streamlining the Criminal Process .....	214
<b>Chapter 6</b>	
Settlement of Election Offences in Election Petition Process .....	222
6.1 Mode of Settlement .....	222
6.2 Election Offences as Ground for Election Petition .....	224
6.2.1 Election Petition in Indonesia: Grounds and Process .....	226



6.2.2 Election Petition in Malaysia: Grounds and Process.....	238
6.2.3 Election Petition in Singapore: Grounds and Process.....	244
6.2.4 Election Petition in the Philippines: Grounds and Process.....	249
6.3 Burden and Standard of Proof.....	260
6.4 Streamlining the Election Petition Process.....	269
6.4.1 Finality of Judgment.....	269
6.4.2 Lapse of Time.....	273
6.5 Protection of Two Interests: Public and Aggrieved Party.....	280

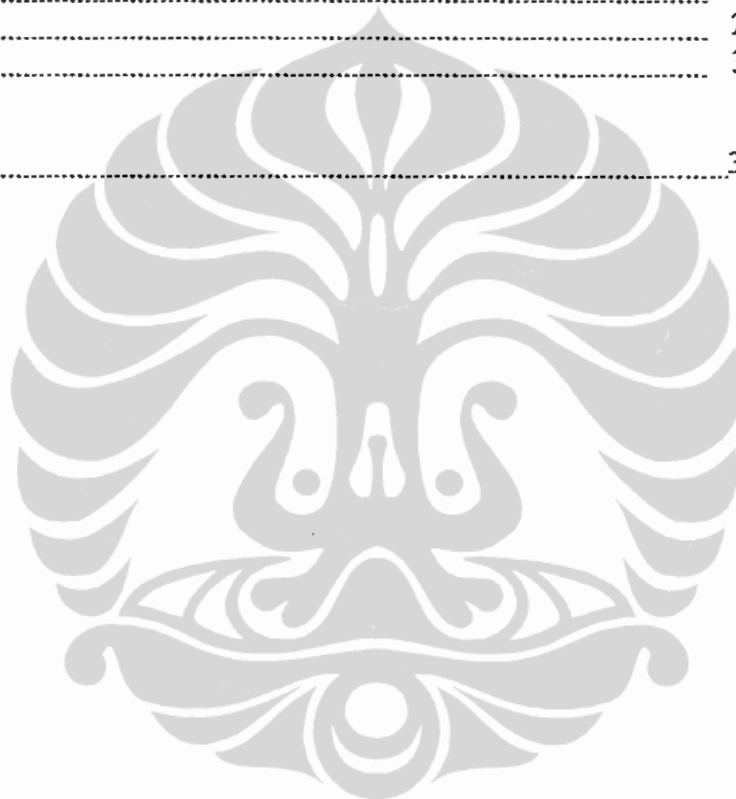
## Chapter 7

### Conclusion and Recommendation

7.1 Conclusion.....	286
7.2 Recommendation.....	295
7.3 Way Forward.....	304

Bibliography.....	307
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### Appendices

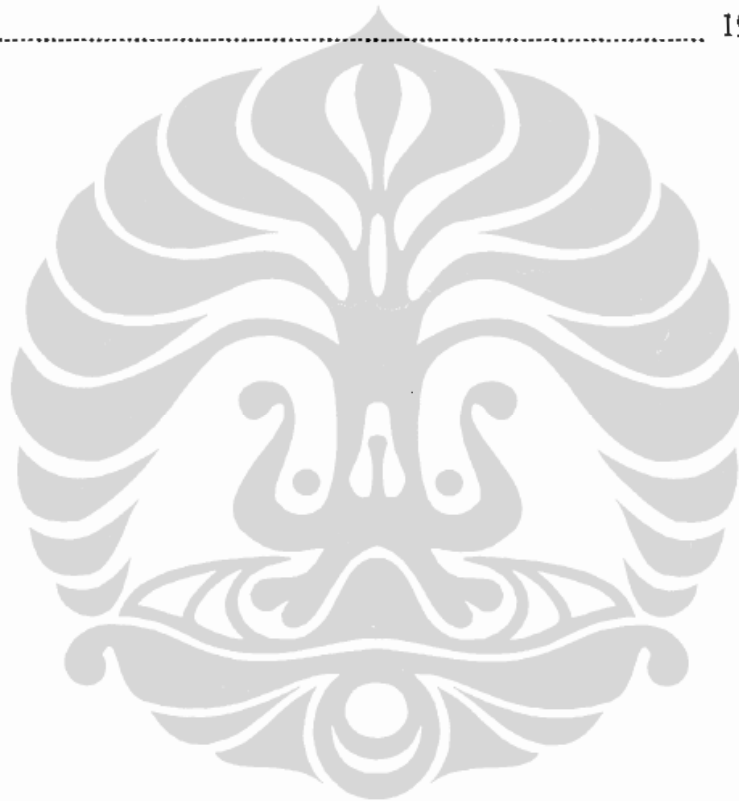


## LIST OF TABLES

	Page
Table 3.1 Legal Framework of Elections.....	89
Table 3.2 Electoral System and Boundary Delimitation.....	92
Table 4.1 Term and Definition of Election Offences.....	103
Table 4.2 Bribery Arrangement in Four Countries.....	125
Table 4.3 Comparison of Elements of One Type of Bribery in Four Countries.....	127
Table 4.4 Arrangement of Bribery in Malaysia and Singapore.....	133
Table 4.5 Arrangement of Election Offences.....	148
Table 5.1 Election Offences and Cancellation/Disqualification.....	170
Table 5.2 Legal Consequences of Election Offences.....	171
Table 5.3 Type of Cases and Institution in Indonesia.....	178
Table 5.4 Role of Institutions in the Settlement of Election Offences.....	179
Table 5.5 Type of Cases and Institution in Malaysia.....	188
Table 5.6 Type of Cases and Institution in Singapore.....	194
Table 6.1 Electoral Dispute Settlement.....	224
Table 6.2 Election Petition.....	225
Table 6.3 Type of Cases and the Relevant Institutions in Indonesia.....	230

## LIST OF FIGURES

	<b>Page</b>
Figure 5.1 Relation between KPU and <i>Panwaslu</i> .....	177
Figure 5.2 Work Division in <i>Panwaslu</i> .....	178
Figure 5.3 PP-KPR Structure in SPR .....	183
Figure 5.4 The Structure of Election Department (ELD) .....	196
Figure 5.5 The Structure of Comelec .....	199



## TABLE OF CASES

	Page
<i>Abu Seman v Public Prosecutor</i> [1982] 2 M.L.J. 338 .....	139,140
<i>Agus Gunawan Bin Cece Arifin and Muhammad Ali Paksi Bin Marzuki Case</i> [Metro Lampung District Court No: 04/Pid.S/04/2004/PN.M ,May 12, 2004].....	143
<i>Antenor A. Arbonida v Commission on Elections and Romeo C. Caringal</i> G.R. No. 167137, <i>En Banc</i> , March 14, 2007 .....	252
<i>Atmo Semito Case</i> [Boyolali District Court No. 150/Pid.B/1999/PN.Bi].....	139,141,142
<i>Bandala v Comelec</i> , G.R. No. 159369, March 3, 2004, 424 SCRA 267, 274 .....	251
<i>Bater v Bater</i> [1950] 2 All ER 458 .....	267
<i>Bush v Gore</i> .....	30
<i>Charis Widyarso Case</i> [Decision of Rembang District Court No. 87/Pid/B/1999/PN.Rbg.].....	139,140,141,142
<i>Co-operative Central Bank Ltd. v Feyen Development</i> [1997] 2 M.L.J. 830.....	16,17
<i>Depok Case</i> .....	270,272
<i>Diaz v Hood</i> .....	35
<i>Domingo v Comelec Case</i> .....	268
<i>Dr. Rolito A. Pahilan v Comelec, et al</i> [G.R. No. 142970. June 20, 2000], <i>En Banc</i> .....	253
<i>Edilwasif T. Baddiri v Comelec</i> .....	275
<i>Esteban M. Zamoras v Commission on Elections (First Division)</i> <i>and Bartolome Bastata</i> .....	276
<i>Fox v Stirk</i> [1970] 2 QB 463 .....	34
<i>Golkar Party Case</i> .....	232
<i>Hamad bin Mat Noor v Tengku Sri Paduka Raja &amp; OR, Hamad Bin Mat Noor v Tengku Sri</i> <i>Paduka Raja &amp; 2 Ors</i> [1993] 2 AMR 33 .....	154,211,238,264
<i>Haw Tua Tau Case</i> .....	212
<i>Hipperson v Newbury District Electoral Registration Officer</i> [1970] 2 QB 463 .....	34
<i>Hornal v Neuberger Products Ltd</i> [1957] 1 Q.B. 247; [1956] 3 All E.R. 970 .....	261
<i>Insular Life Assurance Co., Ltd., Employees Assoc., et al.</i>	

<i>v Insular Assurance Co., Ltd., et al</i> .....	17
<i>James S. Miguel v Comelec, et.al Case</i> [G.R. No. 136966, June 8, 1999] <i>En banc</i> .....	280
<i>JB Jeyaretnam v Public Prosecutor</i> [1990] 1 MLJ.....	6
<i>JB Jeyaretnam v Lee Kuan Yew</i> [1992] 2 SLR 310.....	6
<i>KH. Thohlon Abd Ra'uf Case</i> [Case No. 047/PHPU.A-II/2004].....	155
<i>Kohirman, Sudirman, and Chun Masindo Case</i> [Decision No. 106/Pid.B/2000/PN.LBS 19 June 2001].....	146
<i>Kumpulan Perangsang Selangor v Zaid bin Haji Mohd Noh</i> [1980] 2 M.L.J. 276,277 .....	16
<i>Mah Kah Yew v Public Prosecutor</i> [1971] 1 M.L.J 1 .....	16
<i>Matalam v Comelec</i> , G.R. No. 123230, April 18, 1997, 271 SCRA 733, 745 .....	255
<i>Manuel C. Sunga v Comelec and Ferdinand B. Trinidad</i> [G.R. No. 125629, Mach 25, 1998] .....	146,155,267
<i>Miller v Minister of Pensions</i> [1947] 2 AER, 372.....	213
<i>Mursin bin Laini @ Matdin v Datuk Fred Sinidol</i> .....	137,143
<i>Nasrun Masri Case</i> .....	216
<i>Ocate v Comelec</i> [G.R. No. 160865, March 9, 2004].....	277
<i>Partai Amanat Nasional Case</i> [Case No. 039/PHPU.C-II/2004].....	229
<i>Partai Bintang Reformasi Case</i> [Case No. 028/PHPU.C-II/2004].....	274
<i>Partai Bulan Bintang (PBB) Case</i> [Case No. 045/PHPU.C1-II/2004].....	228,229
<i>Partai Demokrasi Indonesia Perjuangan Case</i> [Case No 024/PHPU-CI.II/2004] .....	156
<i>Partai Nationalist Banteng Kemerdekaan Case</i> [Case No. 015/PHPU.C-II/2004].....	229
<i>Partai Perhimpunan Indonesia Baru Case</i> [Case No. 011/PHPU.C1-Ii/2004] .....	263
<i>Partai Persatuan Demokrasi Kebangsaan Case</i> [Case No. 052/PHPU.C-II/2004].....	273
<i>Partai Persatuan Pembangunan Case</i> [Case No 016/PHPU.C1-II/2004].....	274
<i>People v Honourable Enrique B. Inting</i> [G.R. No. 88919, July 27, 1990].....	203
<i>Public Prosecutor v Datuk Tan Cheng Swee</i> [1980] 2 M.L.J. 277.....	16
<i>Public Prosecutor v Wong Sing Nang</i> , Sessions Court (Miri) – Criminal Case No. 62-27-95..	220
<i>Re Bedwellty Constituency Parliamentary Election, ex parte Finc</i> [1965] 63 LGR 406 .....	45
<i>Rogelio Juan, Pedro de Jesus, Delfin Carreon and Antonio Galguerra v</i> [G.R. No. 132378, January 18, 2000] Third Division.....	204

<i>Siti Fatimah Case</i> Case No. 763/Pid.B/2003/PN.Smg.....	162,163
<i>Sri Mulyanto Case</i> [Boyolali District Court No. 155/PID.B/1999/PN.Bi] ...	137,138,139,141,217
<i>Tang Liang Hong Case</i> .....	247
<i>Teoh Teik Huat v Lim Kean Siew &amp; Ano</i> [Penang – Elections Petition No. 1 of 1981] .....	143,144
<i>Vieth v Jubilerer</i> .....	30,31
<i>Wong Sing Nang v Tiong Thai King</i> [1996] 1 AMR.....	137,142
<i>Yong Teck Lee v Harris Mohd. Salleh &amp; Anor</i> [2002] 3 CLJ 422, [2002] 3 MLJ 230.....	272



## TABLE OF STATUTES

Page

### Indonesia

1945 Constitution .....	11,5,49,80,89,164,177,232,233,262,284
Article 22E .....	50,80,175
Article 24C .....	50,162,232,294
Article 28D (1) .....	82, 91
Article 28D (3) .....	91
Article 28E (3) .....	81
Article 28J (2) .....	82
Law No. 1 of 1946 (Indonesian Criminal Code/KUHP) .....	104,130,145,146,147,153
Section 5 (1) .....	153
Section 55 (1) .....	146
Section 148 .....	147
Section 149 .....	129,130, 146
Section 150 .....	146
Section 152 .....	146
Section 263 (1) .....	146
Law No. 7 of 1953 .....	101,130, 147
Section 120 .....	130
Law No. 15 of 1969 .....	101,130, 147
Law No. 14 of 1970 Section 4 .....	245
Law No. 4 of 1975 .....	101,130, 147
Law No. 2 of 1980 .....	101,130, 147
Law No. 8 of 1981 (Indonesian Criminal Procedure Code/KUHAP) .....	101,150,174,
178,180,181,184,208,209,210,214, 219,263	
Section 183 .....	210,275,264
Section 184 .....	210
Law No. 1 of 1985 .....	101,130, 148
Law No. 2 of 1999 .....	234
Law No. 3 of 1999 .....	101,108,130,143,146,179,180,183,217
Section 9 .....	92
Section 73 .....	130,139,140
Law No. 31 of 1999 .....	189
Law No. 20 of 2001 .....	189
Law No. 31 of 2002 .....	80,90
Law No. 12 of 2003 .....	80,89,99,103,105,106,108,109,119,120,126,127,128,130,
	147,150,151,152,153,155,157,162,163,165,172,174,175,
	178,180,181,206,208,218,227,228,236,239
Section 15 .....	92
Section 17 .....	92,176

Section 18	92
Section 25	177
Section 46	82
Section 60	160
Section 62	160
Section 63	160
Section 65 (2)	158
Section 77	159
Section 96	82
Section 101	82
Section 104	230
Section 107	160
Section 112	161,163
Section 122	176,178,182
Section 127	155,178,179,182,211,215
Section 128	176,177,182,211,215
Section 129	182
Section 130	176,182
Section 131	178,181,184,207,208,211,214,216
Section 133	207,208,211,217
Section 134	162,230,232
Section 137	105,108,161,164,211,216
Section 138	105,108,160
Section 139	105,106,125,126,127,128,129,159,160
Section 140	82,105,107,161,170,227,235
Section 141	108,160
Law No. 22 of 2003	81
Law No. 23 of 2003	90,175
Law No. 24 of 2003	81,162,229,231,232,233,239,263,280,283
Section 10	230,284
Section 28	233
Section 31	235
Section 36	275
Section 38	263
Section 41	263
Section 45	275
Section 74	231,233,236,264,265
Section 75	227,231,235,273
Sections 74–79	280
Law No. 32 of 2004	262,263
Section 95	263
Section 106	262
Law No. 22 of 2007	50,81,89,90,176,175,181
Section 8	177
Section 74	177,180



Law No. 10 of 2008 .....	80,82, 92,94,107,119,176,177,187,206,210
Government Regulation No. 6 of 2005	
Section 82 .....	263
Section 94 .....	262
Supreme Court Regulation No. 2 of 1999 .....	234
Supreme Court Regulation No. 2 of 2005	
Section 3 .....	262
Constitutional Court Regulation No. 04/PMK/2004 .....	232,233,266
Section 4 .....	232
Section 5 .....	233,236
Section 7 .....	266
Section 10 .....	264
Sections 36 – 39 .....	280

## Malaysia

Federal Constitution .....	60,90,184,187,191,241,243
Article 44 .....	59
Articles 113–120 .....	183,184
Article 118 .....	241,243
Constitution (Amendment) (No. 2) Act 1973 [ Act A206] .....	56
Constitution (Amendment) Act 2000 [Act A1095] .....	56
Constitution (Amendment) (No. 2) Act 1984 [Act A585] .....	57
Criminal Procedure Code (Act 593).....	150,152,189,190, 191,194,220
Elections Offences Act 1954.....	83,84,89,90,92,93,98,99,102,110,111,112,113, 119, 120,122,124,125,127,131,132,133,134,138,145,148, 149,150,152,156,163,164,167,168,169,173,186,189, 191,211,220,238,240,241,245
Section 3 .....	164
Section 4 .....	164
Section 6 (2) .....	150,190
Sections 7-11 .....	164
Section 8 .....	109
Section 10 .....	125,127,130,131,132, 137, 144
Section 11 .....	130,144,150, 165,189, 190,191
Section 13 .....	84
Section 27 .....	167,186
Section 31 .....	163,166,168,171,192,220,238,247,276
Section 32 .....	137,144,173,211,238,247,276
Section 33 .....	239,242
Section 34 .....	243
Section 35 .....	243
Section 38 .....	244
Elections Act 1958 .....	83,89,90,103,104,148,184

Elections Commission Act 1957 .....	83,89,90
Evidence Act 1950 .....	220
Elections (Postal Voting) Regulations 1959 .....	83,90
Elections (Control of Motor and Vessels) Regulations, 1959 .....	83,90
Elections (Postal Voting) (Sabah and Sarawak) Regulations 1968 .....	83, 90
Elections (Registration of Electors) Regulation 1971 .....	83, 90
Elections (Registration of Electors) Regulations (Sarawak) 1971 .....	83,90
Elections (Registration of Electors) Regulations (Sabah) 1971 .....	83, 90
Elections (Conduct of Elections) Regulation 1981 .....	83,90
Elections (Registration of Electors) Regulations 2002 .....	83,90
Elections (Postal Voting) Regulations 2003 .....	83,90
Elections (Conduct of Elections) (Amendment) Regulations 2006 .....	83,90
Internal Security Act 1960 (ISA) .....	55
Local Government Elections Act 1960 .....	83,90
Prohibition and Restraining Act 1959 .....	84,90
Sedition Act 1948 .....	83,90
Societies Act 1966 .....	83, 90
The Subordinate Courts Act 1948	
Sections 63-64 .....	190

## Singapore

Constitution of the Republic of Singapore .....	66, 86,91
Parliamentary Election Act..... 89,90,102,103,110,112,127,132,133,149,150,152,165,246,247	
Section 55 .....	165,197
Section 57 (2) .....	197
Section 58 (1) .....	109
Section 61 .....	125,127,133,134,166,195,197, 198
Section 77 .....	195,198
Section 79 .....	166
Section 80 .....	196,198
Section 89 .....	166,246
Section 90 .....	246
Section 92 .....	246,277
Section 93 .....	246
Section 94 .....	247
Section 97 (1) .....	247
Section 100 .....	247,277
The Presidential Elections Act (Chapter 240A) .....	86,90
The Political Donations Regulations (Chapter 236, Rg 2) .....	86,89,90
Parliamentary Election Petition Rules	
Section 4 .....	247
Section 5 .....	247
Domestic Security Law .....	66,86

Evidence Act .....	66
Religious Harmony Regulation .....	66,86
Supreme Court of Judicature Act (Cap. 322) Section 80 .....	246
The Singapore Penal Code .....	66
The Singapore Criminal Procedural Code .....	66,150,194,196,197
Section 3 .....	194,197
Section 7 .....	195
Section 8 .....	198

## The Philippines

The Malolos Constitution .....	71
1935 Constitution .....	71,72
1973 Constitution .....	71,72,203
1987 Constitution .....	74,76, 86,90,198
Article X .....	74
Article 2 .....	183
Article VI Section 17 .....	257
Article IX C .....	87,201
Presidential Proclamation No. 3, 1986 .....	73
Act Providing for Synchronised Barangay and SK Elections (RA 9164) – 2002 .....	88,92
Batas Pambansa Bilang 881 – Omnibus Elections Code .....	86,87,90,102,103,113,114,117, 148,149,152,169,170,202,204,221,227,249
Section 5 .....	87
Section 9 .....	87,117
Section 18 .....	117
Section 41 .....	88
Section 52 .....	87
Section 57 .....	207
Section 61 .....	88
Section 68 .....	167,168,169,208
Sections 74 – 76 .....	117
Section 80 .....	117, 168
Sections 81,82,84 – 88 .....	117
Section 83 .....	117, 168
Section 85 .....	117, 168
Section 86 .....	88,117,168
Section 89 .....	117,168,169
Sections 95 – 97 .....	117,168,169
Section 95 - 112 .....	117
Section 104 .....	117,168,169
Sections 122 – 123 .....	117
Sections 127 – 129 .....	117
Section 132 .....	117

Sections 134 – 135 .....	117
Section 145 .....	117
Section 148 .....	117
Section 150 .....	117
Section 152 .....	117
Section 265 .....	203
Sections 172 – 174 .....	117
Section 178 .....	117
Section 180 .....	117
Section 182 .....	117
Sections 184 – 186 .....	117
Sections 189 – 192 .....	117
Sections 194 -198 .....	117
Sections 202 – 220 .....	117
Section 223 .....	117
Sections 229 – 231 .....	117
Section 233 .....	117, 250,252
Section 234 .....	117, 250,252
Section 235 .....	117, 250,252
Section 236 .....	117, 250,252
Sections 239 – 240 .....	117
Section 241 .....	250,252,254
Section 242 .....	250
Section 243 .....	250, 253
Section 244 .....	251
Section 247 .....	252
Section 248 .....	252
Section 249 .....	257
Section 250 .....	257, 260
Section 251 .....	258, 259
Section 252 .....	258, 270
Section 253 .....	259
Section 255 .....	278
Section 256 .....	258, 260
Section 257 .....	258, 260
Section 258 .....	258
Section 261 .....	114,115,116,117,118,125,127,134,135,145,168,169,174,204
Section 262 .....	118
Section 264 .....	135,167,169
Section 265 .....	205
Section 268 .....	204
<b>Comelec Rules of Procedure 1993</b>	
Section 3 .....	267, 278
Section 4 .....	157, 279
Section 7 .....	267

Electoral Modernisation Act (RA 8436) – 1997 .....	87, 91
Fair Election Act (RA 9006) – 2001 .....	87, 91
Mindanao Automation (RA 8046) – 1995 .....	87, 91
Overseas Voting Act (RA 9189) – 2003 .....	87, 91
Synchronised Elections Law (RA 7166) – 1992 .....	87, 90
Criminal Procedure Code of the Philippines .....	222
Electoral Reforms Law of 1987 (RA 6646) – 1987 .....	87, 90
Party List Law (RA 7941) – 1995 .....	87, 90
Voter's Registration Act of 1996 (RA 8189) – 1996 .....	87, 91

## Other Countries

Corrupt Practices Act of 1925(United States) .....	122
Corrupt and Illegal Practices Prevention Act, 1883 (Britain) .....	2, 122
Government of India Act, 1919 .....	2
Indian Penal Code	
Section 171-B .....	125
Public Office Elections Law (1996 revision), (Japan) .....	123
Representation of the People Act 1983 (Britain)	
Section 1 .....	46
Section 74 .....	39
Section 75 .....	39
Section 76 .....	39
Section 102 .....	105
Section 159 .....	46
Section 160 .....	46
Section 168 .....	105
Section 169 .....	105
Section 173 .....	46
Section 174 .....	46
Section 175 .....	105

## LIST OF ABBREVIATION

ABRI	<i>Angkatan Bersenjata Republik Indonesia</i> (Armed Forces of the Republic of Indonesia)
A.C.	Law Reports, Appeal Cases
A.E.R.	All England Law Reports
AIIS	<i>Angkatan Islam Singapore</i>
ANP	Alliance for New Politics
ASEAN	Association of Southeast Asian Nations
BA	<i>Barisan Alternatif</i> (Alternative Front)
BANDILA	<i>Bansang Nangkaisa sa Diwa at Layunin</i> (Nation United in Spirit and Objective)
BAWASLU	<i>Badan Pengawas Pemilu</i> (Election Supervisory Board)
Bayan	<i>Bagong Alyansang Makabayan</i> (New Nationalist Alliance)
BEI	Board of Election Inspectors
BN	<i>Barisan Nasional</i> (National Front)
BOC	Board of Canvassers
BP	<i>Batasang Pambansa</i> (National Legislature)
BPK	<i>Badan Pemeriksa Keuangan</i> (State Financial Audit Board)
BPR	<i>Badan Pencegah Rasuah</i> (Anti Corruption Agency)
BS	<i>Barisan Sosialis</i> (Socialist Front)
Cap	Chapter
CA	Commission on Appointments
C.J.	Chief Justice
Comelec	Commission on Elections
DAP	Democratic Action Party
D.C.	Divisional Court
DPA	<i>Dewan Pertimbangan Agung</i> (Great Advisory Council)
DPD	<i>Dewan Perwakilan Daerah</i> (Representative Council of Regions)
DPP	<i>Dewan Pimpinan Pusat</i> (Central Board of Political Party)
DPR	<i>Dewan Perwakilan Rakyat</i> (People Representative Council)
DPRD Kab/Kota	<i>Dewan Perwakilan Rakyat Daerah Kabupaten/Kota</i> (People Representative Council in Regency/Municipality level)
DPRD Provinsi	<i>Dewan Perwakilan Rakyat Daerah Provinsi</i> (People Representative Council in Provincial level)
DUN	<i>Dewan Undangan Negeri</i> (State Legislative Assembly)
ECAD	Electoral Contests Adjudication Department
EDSA	<i>Epifanio de los Santos</i>
EMB	Electoral Management Body
FPTP	First Pass The Post
GAD	Grand Alliance for Democracy
Golkar	<i>Golongan Karya</i> (Functional Group)
G.R.	Government Regulation
GRC	Group Representation Constituencies

HAM	<i>Hak Asasi Manusia</i> (Basic Human Rights)
H.C.	High Court
HIR	<i>Herziene Inlands Reglement</i>
HRET	The House of Representatives Electoral Tribunal
Ibid	<i>Ibidem</i> (in the same place)
Id	<i>Idem</i> (the same)
IFES	International Foundation for Electoral Systems
ISA	Internal Security Act
JBC	Judicial and Bar Council
KAMPI	<i>Kabalikat ng Malayang Pilipino</i>
K.B.	Law Report, King's Bench
KBL	<i>Kilusang Bagong Lipunan</i> (New Society Movement)
KEADILAN	<i>Parti Keadilan Nasional</i> (National Justice Party)
KKN	<i>Korupsi, Kolusi, Nepotisme</i> (Corruption, Collusion, Nepotism)
KPP	<i>Kilusan Para sa Pambansang Pagbabago</i> (National Renewal Movement)
KPPS	<i>Kelompok Penyelenggara Pemungutan Suara</i> (Polling Station Staff)
KPU	<i>Komisi Pemilihan Umum</i> (General Election Commission)
KPUD	<i>Komisi Pemilihan Umum Daerah</i> (General Election Commission at Provincial/Municipality/Regency level)
KUHP	<i>Kitab Undang-Undang Hukum Pidana</i> (Indonesian Criminal Code)
KUHAP	<i>Kitab Undang-Undang Hukum Acara Pidana</i> (Indonesian Criminal Procedure Code)
Lakas	<i>Lakas ng Bansa</i> (Nation's Power)
LAMP	<i>Laban ng Masang Pilipino</i>
LAMMP	<i>Laban ng Makabayang Masang Pilipino</i> (Struggle of the Nationalist Philippine Masses)
LDP	<i>Laban ng Demokratikong Pilipino</i>
LED	The Elections Department of Singapore
Loc.Cit.	<i>Loco Citato</i> (in the place)
LP	Liberal Party
L.R.	Law Reports
LUBER - JURDIL	<i>Langsung, Umum, Bebas, Rahasia - Jujur dan Adil</i> (Direct, Public, Free, Confidential, Fair and Just Principle)
MA	<i>Mahkamah Agung</i> (Supreme Court)
Masyumi	<i>Majelis Syuro Muslimin Indonesia</i> (Indonesian Modernist Islamic Party)
MCA	Malaysian Chinese Association
MIC	Malaysian Indian Congress
MK	<i>Mahkamah Konstitusi</i> (Constitutional Court)
M.L.J.	Malayan Law Journal
MMC	Multi Member Constituency
MP	Members of Parliament
MTC	Municipal Trial Court
MPR	<i>Majelis Permusyawaratan Rakyat</i> (People Consultative Assembly)
NCMP	Non-constituency Member of Parliaments
NGO	Non Governmental Organisations

NMP	Nominated Member of Parliaments
NP	The <i>Nacionalista</i> Party
NPC	Nationalist People Coalition
NSP	National Solidarity Party
NU	<i>Nahdatul Ulama</i> (Indonesia Traditional Islamic Mass Organisation)
NUCD	National Union of Christian Democrats
Op.Cit.	<i>Opere Citato</i> (in the work)
PAN	<i>Partai Amanat Nasional</i> (National Mandate Party)
PANWASLU	<i>Panitia Pengawas Pemilu</i> (General Election Supervisory Committee)
PAP	People's Action Party
PAS	<i>Parti Islam SeMalaysia</i> (Pan Malaysian Islamic Party)
PBB	<i>Partai Bulan Bintang</i> (Crescent Star Party/ Indonesia)
PBB	<i>Parti Pesaka Bumiputra Bersatu</i> (United Bumiputra Pesaka Party/Malaysia)
PBDS	<i>Parti Bansa Dayak Sarawak</i> (Sarawak Dayak Party)
PBR	<i>Partai Bintang Reformasi</i> (Reform Star Party)
PBS	<i>Parti Bersatu Sabah</i> (Sabah United Party)
P.C.	Law Reports, Privy Council Appeals
PD	<i>Partai Demokrat</i> (Democratic Party)
PDI-P	<i>Partai Demokrasi Indonesia Perjuangan</i> (Indonesian Democratic Party of Struggle)
PDP-Laban	<i>Partindo Demokratikong Pilipino-Lakas ng Bayan</i> (Philippine Democratic Party- People's Power)
PDRM	<i>Polis DiRaja Malaysia</i> (Royal Malaysian Police)
PEMILU	<i>Pemilihan Umum</i> (General Elections)
PET	Presidential Electoral Tribunal
PF	People's Front
PILKADA	<i>Pemilihan Kepala Daerah</i> (Local Government Election)
PKB	<i>Partai Kebangkitan Bangsa</i> (National Awakening Party)
PKN	<i>Parti Keadilan Nasional</i> (National Justice Party)
PKR	<i>Parti Keadilan Rakyat</i> (People Justice Party)
PKS	<i>Partai Keadilan Sejahtera</i> (Prosperous Justice Party)
PMK	<i>Peraturan Mahkamah Konstitusi</i> (Constitutional Court Regulations)
PMP	<i>Partindo ng Masang Pilipino</i> (Party of the Philippine Masses)
PN	<i>Pengadilan Negeri</i> (District Court)
PNB	<i>Partindo ng Bayan</i> (Party of the Nation)
PNBK	<i>Partai Nasional Banteng Kemerdekaan</i> (Freedom Bull National Party)
POLRI	<i>Kepolisian Republik Indonesia</i> (Indonesian Police Department)
PP	<i>Peraturan Pemerintah</i> (Government Regulation)
PPDK	<i>Partai Persatuan Demokrasi Kebangsaan</i> (United Democratic Nationhood Party)
PPK	<i>Panitia Pemilihan Kecamatan</i> (District Elections Committee)
PP-KPR	<i>Pasukan Penguat Kuasa Kempen Pilihan Raya</i> (Enforcement Team of General Elections Campaign)
PPP	<i>Partai Persatuan Pembangunan</i> (United Development Party)



PPS	<i>Panitia Pemungutan Suara</i> (Votes Casting Committee at the sub-district/village level)
PR	Proportional Representation
PROMDI	<i>Probinsya Muna Development Initiative</i> (Provinces First Development Initiative)
PRM	<i>Parti Rakyat Malaysia</i> (Malaysian People's Party)
PT	<i>Pengadilan Tinggi</i> (High Court)
Q.B.	Law Reports, Queen's Bench
RA	Republic Act
RM	<i>Ringgit Malaysia</i> (Malaysian Ringgit)
RP	<i>Rupiah</i> (Indonesian Rupiah)
RPD	Registry of Political Donations
RTC	Regional Trial Court
S.C.	Supreme Court
S.C.J.	Supreme Court Judge
S.C.R.	Supreme Court Reports (India)
SET	Senate Electoral Tribunal
SDP	Singapore Democratic Party
SJP	Singapore Justice Party
SMC	Single Member Constituency
SPR	<i>Suruhanjaya Pilihanraya</i> (Malaysia General Election Commission)
SUF	Singapore United Front
TI	Transparency International
TNI	<i>Tentara Nasional Indonesia</i> (National Forces of Indonesia)
TPS	<i>Tempat Pemungutan Suara</i> (Polling Station)
UMDP	United Muslim Democratic Party
UMNO	United Malays National Organisation
UN	United Nations
UNF	United Nation Front
UNIDO	United Nationalist Democratic Organisation
U.S.	United States of America
USIA	United States of America Information Agency
UU	<i>Undang-Undang</i> (Law/Act)
UUD	<i>Undang-Undang Dasar</i> (Constitution)
WP	Worker's Party

## CHAPTER 1

### INTRODUCTION

*"Everyone has the right to take part in the government of his country, directly or through free chosen representatives. Everyone has the right to equal access to public service in his country. The will of the people shall be the basis of the authority of the government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."*

(Article 21 of the Universal Declaration of Human Rights)

#### 1.1 Background

This thesis is a comparative study focusing on the settlement of election offences in four Southeast Asian countries, namely Indonesia, Malaysia, Singapore and the Philippines, with special reference to the Indonesia's General Elections. The main goal of this thesis is to compare and review the legal framework for holding elections in these selected countries based on international electoral standards.

This thesis will demonstrate that the general election process in these four countries, particularly Indonesia in general is in line with international standards on election. However, to ensure a better democratic system of government, there is a need to make reforms toward settlement of election offences through a country's criminal process and election petition process.

Today, democracy is widely accepted as compared to the authoritarian system. Free and fair elections are the foundation of democracy. To ensure the purity of an electoral process, it is essential that law provides full protection to electorates against any fear, injury,

misrepresentation, fraud and other undesirable practices, which may be committed by or on behalf of candidates at an election.<sup>1</sup>

The effort to address the problem of election offences has been an issue in many countries, such as in the United Kingdom since 1883<sup>2</sup> and in India since 1919.<sup>3</sup> In Southeast Asian countries, such protection has also been covered in the framework of election law.

Elections are important events in the democratic process of Indonesia, Malaysia, Singapore and the Philippines. These countries have conducted periodical elections for quite a long time. Considering the importance of elections, it must be protected from various offences that may hamper the process from its purposes. These offences must be settled by way of appropriate and effective manners. Therefore, the legal framework of these four countries in addressing election offences becomes an interesting and important subject of study. In this respect, a comparative study is important to find more effective ways to strengthen the election process of the respective countries.

There are fifteen election standards which are internationally acknowledged. These standards cover the following areas: (1) structuring the legal framework, (2) the electoral system, (3) boundary delimitation, districting or defining boundaries of electoral units, (4) the right to vote and to be elected, (5) electoral management bodies, (6) voter registration and voter registers, (7) ballot access for political parties and candidates, (8) democratic electoral campaigns, (9) media access and freedom of expression, (10) campaign finance and expenditure, (11) balloting, (12) votes counting and tabulating, (13) role of the representatives of the parties

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<sup>1</sup> Virbhadra Singh, "Foreword" in Jhingta, Hans Raj, *Corrupt Practice in Elections*, (New Delhi: Deep & Deep Publications, 1996) at xi.

<sup>2</sup> *The Corrupt and Illegal Practices Prevention Act, 1883*.

<sup>3</sup> *The Government of India Act, 1919*.

and candidates, (14) electoral observers, and (15) compliance and enforcement of electoral law.<sup>4</sup>

This research does not elaborate and use all the standards. In accordance with the purpose of this research, the focus is on the international standards relating to compliance and enforcement of election laws, which is standard fifteen.<sup>5</sup>

## 1.2 Problem Identification

Based on the background elaborated above, this thesis is intended to address two main issues:

- (a). Whether the legal framework of elections in Indonesia, Malaysia, Singapore and the Philippines is in line with international standards on elections and;
- (b). How election offences are settled through the criminal process and through the process of election petition.

By looking at the two main issues, this thesis argues that the legal framework of elections in Indonesia, Malaysia, Singapore and the Philippines in general is in line with international standards on elections. However, in certain aspects, the legal framework is not always in conformity with international standards.

## 1.3 Scope of Research

Considering the extensive breadth of the topic, the scope of this thesis will be limited to the following. This study will be limited to reviewing four Southeast Asian countries that have routinely held elections since their independence, i.e., Indonesia, Malaysia, Singapore, and the Philippines. Indonesia is the focal point of this research.

Indonesia, Malaysia, Singapore, and the Philippines recognise several levels and types of elections, i.e.: (1) Legislative and Presidential elections (Indonesia, Singapore, and the Philippines); and (2) Elections to elect members of parliament/council at the national level and

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<sup>4</sup> See International IDEA, *International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2002).

<sup>5</sup> Other standards of international democratic election will also be mentioned in several sections, despite the fact that they are not used as tools of analysis.

state level (Malaysia) or Provincial level (Indonesia and the Philippines). This thesis will examine elections for parliament at the national level. However, this study will also address other types of elections (such as state/ provincial elections and presidential elections).

Before moving forward, the term “settlement” used in this study will be clarified. This word is derived from the word “settle.” Oxford Dictionary of Current English defines “settle” as “reach agreement on a dispute” or “decide or arrange something finally.” While “settlement” means “the action of settling” or “an official agreement intended to settle a dispute.”<sup>6</sup>

According to Collins English Dictionary, “to settle” means “to determine (legal dispute)”, “to decide” or “to resolve.” Meanwhile “settlement” is defined as “the determination of a dispute.”<sup>7</sup> According to the Cambridge Advance Learners Dictionary, “to settle” means “to reach a decision or agreement about something.” Settlement is the noun of “to settle.”<sup>8</sup> Taking together all definitions above, it is submitted that the proper definition of “settlement of election offences” is the determination or decision of a legal dispute (particularly election offences) in the process of elections which is primarily handled by court mechanisms.

#### 1.4 Methodology

This thesis is a comparative study. Comparison can be defined as an activity to identify the similarities and differences between two or more indicators. Comparative jurisprudence in Black’s Law Dictionary is defined as “the study of the principles of legal science by the comparison of various systems of law.”<sup>9</sup> This thesis is using a type of comparative study that “objectively and systematically analyses solutions of which various systems offer for a given

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<sup>6</sup> *Oxford Dictionary of Current English*, (Oxford: Oxford University Press, 2006) at 830.

<sup>7</sup> Collins, Harper, *Collin English Dictionary*, (Glasgow: Harper Collins, 2007) at 1476.

<sup>8</sup> *Cambridge Advance Learners Dictionary*, (Cambridge: Cambridge University Press, 2005) at 1163.

<sup>9</sup> Black, Henry Campbell, *Black’s Law Dictionary*, 6th Edition, (St. Paul, Minn: West Publishing Co, 1990) at 282.

legal problem.”<sup>10</sup> In this thesis, the legal problem is election offences which are committed during the election process.

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 problem, either by means of criminal process or by means of election petition process. This thesis analyses the extent to which the legal framework incorporates several international standards concerning elections. To meet this objective, the first step is to identify certain international standards which are relevant to the settlement of election offences. This is determined by the various international documents.

The next step is to analyse the conformity between the election legal framework in the respective countries and international standards. This also involves study of legal documents related to elections in these four countries. The documents are constitutions, acts and subsidiary legislations. The documents are compared for the similarities and differences, and also for the weaknesses to be avoided and strengths to be followed or adapted to local circumstances.

To understand the settlement of election offences in these countries, either through the criminal process or by election petition, several methods will be used. Firstly, an analysis of the relevant legislations and cases. This is undertaken to discover how effective the existing laws are in settling election offences, what problems arise, and how to improve the weaknesses and shortcomings. At this point, the comparative analysis is applied to reveal the positions of each country toward certain legal issues on election offences.

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<sup>10</sup> Hug (as cited by Peter De Cruz) pointed out several types of comparative studies : a) Comparison of foreign systems with the domestic system in order to ascertain similarities and differences; (b) Studies which analyse objectively and systematically solutions which various systems offer for a given legal problem; (c) Studies which investigate the causal relationship between different systems of law; (d) Studies which compare the several stages of various legal systems; (e) Studies which attempt to discover or examine legal evolution generally according to periods and systems. See De Cruz, Peter, *A Modern Approach to Comparative Law*, (Boston: Kluwer, 1993).

The primary data of this thesis are documents in the form of laws and legislation or court decisions. It is supported by other literatures, 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.

This thesis examined election cases in the selected countries. The cases were obtained from law journals, copy of official documents (unpublished), the Supreme Court's official websites, as well as literature which discussed election cases. Such cases were easily found in Indonesia, Malaysia, and the Philippines. It was difficult to obtain such cases in Singapore.

It is therefore important to note very early that, despite the efforts to find out such cases in Singapore by means of the same method (as applied in three other countries) there is no election case found in Singapore. In several literature discussing election system and process in Singapore, such as *Constitutional Law in Malaysia and Singapore*,<sup>11</sup> *Government and Politics of Singapore*<sup>12</sup> and "Electoral Politics in Singapore,"<sup>13</sup> there were no discussions of election cases. The discussion primarily focuses on electoral system, such as the introduction of Group Representation Constituencies (GRC) in Singapore. Therefore, for Singapore, this thesis mainly relies on legislation, rather than case law. There are several cases which are related to elections, such as *JB Jeyaretnam v Public Prosecutor*<sup>14</sup> and *JB Jeyaretnam v Lee Kuan Yew*.<sup>15</sup> However,

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<sup>11</sup> Tan, Kevin Y.L and Thio Li-An, *Constitutional Law in Malaysia and Singapore* (2nd ed). (Singapore: Butterworths Asia, 1997).

<sup>12</sup> Quah, Jon S.T, Chan Heng Chee and Seah Chee Meow, *Government and Politics of Singapore*. (Oxford: Oxford University Press, 1985).

<sup>13</sup> Hwee, Yeo Lay, "Electoral Politics in Singapore", in *Electoral Politics in Southeast & East Asia* (Eds) Aurel Croissant, Gabriele Bruns and Marei John, (Singapore: Friedrich Ebert Stiftung, 2002).

<sup>14</sup> *JB Jeyaretnam v Public Prosecutor* [1990] 1 MLJ 129 (High Court, Singapore) quoted in Tan, Kevin Y.L and Thio Li-An, *op.cit.*, 797-799

<sup>15</sup> *JB Jeyaretnam v Lee Kuan Yew* [1992] 2 SLR 310 (Singapore Court of Appeal) quoted in Tan, Kevin Y.L and Thio Li-An, *id* at 822-832.

these cases focused on freedom of speech and expression issues<sup>16</sup> rather than election offences or election disputes.

## 1.5 Literature Review

### Democracy and General Elections

The literal meaning of democracy – government by the people – is probably the most basic and widely used definition.<sup>17</sup> Democracy may be defined as not only as government by the people, but also as government for the people, that is, government acting in accordance with the preferences of the people. An ideal democratic government would be one whose actions are always in perfect correspondence with the preferences of its citizens. Such complete responsiveness had never existed and perhaps never been achieved, but it serves as an ideal to which democratic regimes should aspire.<sup>18</sup>

Until the 20<sup>th</sup> century, numerous countries had yet to practice democracy. It was only by the end of the 19<sup>th</sup> century that constitutional democracy appeared as a concrete program and political system. At present, the number of countries adopting democracy has increased. It has grown from one country in 1860 to 65 countries in 1990.<sup>19</sup> Freedom House has recorded that up to 1999, electoral democracies represent 120 of the existing 192 countries and covers 62.5 percent of the world's population.<sup>20</sup>

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<sup>16</sup> See, e.g. Tan, Kevin Y.L and Thio Li-An, op.cit., 797-799 and 822-832.

<sup>17</sup> Liphart, Arend, *Democracies, Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, (New Haven: Yale University Press, 1984) at 1. The word democracy resulted from the Greek language, namely *demos* that means people and *kratos* or *kratein*, which means power or in power. See Miriam Budiarjo, *Dasar-Dasar Ilmu Politik [The Principles of Political Science]*, (Jakarta: Gramedia, 1985) at 50.

<sup>18</sup> Ibid.

<sup>19</sup> See chart concerning development of democracy in Dahl, Robert A, *Perihal Demokrasi – Menjelajah Teori dan Praktek Demokrasi Secara Singkat [Regarding Democracy – Briefly Exploring the Theory and Practices of Democracy]*, (Jakarta: Yayasan Obor Indonesia, 2001) at 11.

<sup>20</sup> <http://www.freedomhouse.org/reports/century.pdf> cited on September 10, 2005.



Why has the majority of states chosen democracy? Democracy offers more protection of human rights than an authoritarian system.<sup>21</sup> Stable and solid democracy, in general, correlates to greater appreciation of human rights. Meanwhile, in other sectors, which are not related to political freedom, democracy promises the creation of a political framework where groups fighting for development and human rights have a better opportunity in organising and expressing their demands. Sorensen said, democracy offers opportunity, not assurance of accomplishment.<sup>22</sup>

Regarding the same question of why democracy is chosen, Robert A. Dahl provided ten reasons:<sup>23</sup> (1) Democracy helps to prevent the development of government by ruthless and devious autocracy class;<sup>24</sup> (2) Democracy guarantees its citizen with a number of human rights standards which are not provided and cannot be provided by non democratic systems; (3) Democracy ensures greater personal freedom for its citizen compared to other possible alternatives; (4) Democracy assists people in protecting their main interests; (5) Only a democratic government is capable of providing as great opportunities for people as possible, to use their freedom of choice , i.e., to live under laws of their choice; (6) Only a democratic government is capable of providing as great opportunities as possible to discharge moral responsibility; (7) Democracy helps develop humanity more totally than other possible alternatives; (8) Only democratic government is capable of assisting the development of a relatively high degree of political equality; (9) Modern representative democratic countries do not fight against one another; and (10) Countries with democratic governments tend to be more prosperous than countries with non democratic governments.

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<sup>21</sup> Sorensen, Georg, *Demokrasi dan Demokratisasi [Democracy and Democratization]*, (Yogyakarta: Pustaka Pelajar, 2003) at 52-53.

<sup>22</sup> *Ibid.*

<sup>23</sup> Dahl, *op.cit.*, 63-83.

<sup>24</sup> For example, Josep Stalin in Soviet Union, Adolf Hitler as Germany autocrat ruler, or Pol Pot in Cambodia.

With regard to reason that democracy is an important power for peace, German philosopher Immanuel Kant in his essay "Perpetual Peace" (1795) stated that once enforced, democracy will bring about peace relations since a democratic government is controlled by the community.

Empirical support over Kant and Dahl's opinion is put forward by R.J. Rummel who concluded that the more libertarian a country is, the less it involves itself in any acts of violence with other countries. Nevertheless, several studies rejected that idea, for example, Melvin Small and J. David Singer did not find any significant difference between democracy and other regimes regarding the frequency of involvement in war. Despite differences in opinion, optimism over democracy continues to grow because even though they are involved in war, democratic countries do not attack one another.<sup>25</sup>

Regarding the relationship between democracy and economic welfare, Robert Dahl convincingly states that the experience in the 19<sup>th</sup> and 20<sup>th</sup> centuries demonstrates that democratic countries are prosperous and non democratic countries are generally poor. Dahl relates this matter in support of democracy for people's education, independent judiciary, and communication of which are useful to economic growth.<sup>26</sup>

A slightly different conclusion is presented by Sorensen who states that there is no direct relationship between the form of regime (democratic or authoritarian) and the results of development by simply reasoning that various types of democratic and authoritarian regimes have different development capacities.<sup>27</sup> This argument may be supported by the fact that some non democratic countries are more prosperous than certain democratic countries, such as China compared to India, or Saudi Arabia compared to the Philippines. However, Dahl's opinion in this

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<sup>25</sup> Sorensen, *op.cit.*, 166-169 and Dahl, *op.cit.*, 80-81.

<sup>26</sup> Dahl, *id* at 82.

<sup>27</sup> See Sorensen, *op.cit.*, 155.

issue is still relevant, because he used the words “tend to be more prosperous” rather than “always more prosperous.” This means that generally democracy gives more opportunity for people in that country to reach prosperity than in non democratic countries.

In addition to that, democracy has a correlation with corruption prevention (even though there are other factors). According to Klitgard, Maclean-Abaroa and Parris, a multi-party system and a free market system can increase competition and accountability, which will subsequently diminish corruption.<sup>28</sup>

As mentioned above, the existence of regular election is part of the process in a democratic government. Even though elections are not the only instruments of democracy, they are of critical importance. In fact, the existence of elections indicates that a state adopts a democratic political system, as explicitly stated by Powell:

“Elections are not the only instruments of democracy. They must be supported by other organisations and rules that encourage communication and cooperation. However, elections are critical democratic instruments. They claim of establishing a system that compels or greatly encourages the policymakers to pay attention to citizens. There is a widespread consensus that the presence of competitive elections, more than any other feature, identifies a contemporary nation-state as a democratic political system.”<sup>29</sup>

It is necessary to emphasise and underline Powell’s argument, especially one that states: “the presence of competitive elections, more than any other features, identifies a contemporary nation-state as a democratic political system.” In conjunction with this statement, the question to be answered is whether Indonesia, Malaysia, Singapore, and the Philippines are countries with democratic political systems. To be more specific the question is whether there are competitive

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<sup>28</sup> Klitgard, Robert, Ronald Maclean-Abaroa, and H. Lidsey Parris, *Penuntun Pemberantasan Korupsi dalam Pemerintahan Daerah [Guidance to Elimination of Corruption in the Regional Government]*, (Jakarta: Yayasan Obor Indonesia, 2005) at 110.

<sup>29</sup> Powell JR, G. Bingham, *Elections as Instruments of Democracy (Majoritarian and Proportional Visions)*, (New Haven: Yale University Press, 2000) at 4.

elections in Indonesia, Malaysia, Singapore, and the Philippines.<sup>30</sup> The answer to that question will denote whether these countries adopt democracy.

From a legal perspective, the answer is positive. Indonesia for example, after the third amendment in 2002, the 1945 Constitution has an explicit provision governing “general elections” as well as a general election commission.<sup>31</sup> From this perspective, we can assume that, *de jure*, Indonesia adopts democracy with a representation system. Elections are instruments to elect the people's representatives.

The legal provision concerning free and regular elections also appears in the constitution of Malaysia, Singapore, and the Philippines. Therefore, it is clear that in terms of constitution, the respective countries adopt representative democracy. However, in terms of the quality of the democracy, there are different views. This issue is discussed further in chapter three.

### **Periodical General Elections**

In Indonesia, Malaysia, Singapore, and the Philippines as well as other Southeast Asian countries, elections have been held regularly and they have also been taken seriously. Massive amounts of money were spent to mobilise voters and organise polls.<sup>32</sup> Elections have been a regular feature of Southeast Asian politics since the 1940s and even earlier in some cases.

In Indonesia, for example, general elections have been held since 1955. Moving further back, its experience of elections or a representative system goes back to the colonial era, and

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<sup>30</sup> What Powell meant by competitive election is: “the voters can choose among alternative candidates. In practice, at least two organised political parties that have some chance of winning seem to be needed to make choices in legislative elections meaningful. People must also be allowed to have the basic freedom to form and express preferences.” Powell, *id* at 255.

<sup>31</sup> Prior to third amendment, there was no provision in the 1945 Constitution that explicitly stipulates the word general election or general election institution, however, based on the understanding of the articles related to the People Representative Assembly, experts conclude that general elections have legal basis in the 1945 Constitution.

<sup>32</sup> Taylor, R.H, “Elections and Politics in Southeast Asia” in *The Politics of Elections in Southeast Asia*, (Ed. R.H. Taylor) (Cambridge: Woodrow Wilson Center Press and Cambridge University Press, 1996) at 4.

local elections in some places, such as Yogyakarta<sup>33</sup> and Minahasa (South Sulawesi).<sup>34</sup> From the Soeharto's era known as the 'New Order,' general elections were held regularly, i.e. in 1971, 1977, 1982, 1987, 1992 and 1997. The following general election should have taken place in 2002, but due to political, social, and economics crisis of 1998 that led to the fall of Soeharto, the general election was held in 1999 and became Indonesia's most democratic election ever held in the last 30 years.<sup>35</sup> The latest general election was conducted in 2004. The next general election will be held in 2009.

In Malaysia, elections were held in 1955 (prior to its independence), 1959, 1964, 1969, 1974, 1978, 1982, 1986, 1990, 1995, 1999, 2004 and 2008. Similarly, Singapore has held elections since 1955 (before its independence and separation from Malaysia). From 1963 and 2006, Singapore has held 11 elections. The first election ever held in the Philippines was in 1907. The last sixth elections in the Philippines were held in 1987, 1992, 1995, 1998, 2001, and 2007.

Comparative studies on politics and governments in Southeast Asia have been quite frequently conducted and reported. Examples are among others, Lukman Thaib's *The Politics and Governments of South East Asia*,<sup>36</sup> Anek Laothamatas's *Democratisation in Southeast and East Asia*,<sup>37</sup> and Muthiah Alagappa's *Political Legitimacy in Southeast Asia*.<sup>38</sup>

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<sup>33</sup> The province located in the south part of Java Island, surrounded by Central Java Province.

<sup>34</sup> Feith, Herbert, *Pemilihan Umum 1955 di Indonesia* [The 1955 Indonesian General Election], (Jakarta: Kepustakaan Populer Gramedia, 1999) at 1-8.

<sup>35</sup> Saifullah Ma'shum, *KPU & Kontroversi Pemilu 1999* [General Election Commission and Controversy of the 1999 General Elections], (Jakarta: Pustaka Indonesia Satu, 2001) at ix. Ma'shum pointed out that the 1999 General Elections could be considered as "unique." The reason is that there were two opposite opinions regarding the General Election. According to the General Election Supervisory Committee and international observers, the 1999 General Elections were held in a democratic manner. Ironically, according to the General Election Commission itself (at that time consisted of political party representatives) the General Elections were not democratic and suffered from many irregularities.

<sup>36</sup> Lukman Thaib, *The Politics and Governments of Southeast Asia*, (Kuala Lumpur: Golden Books Center, 1997).

<sup>37</sup> Laothamatas, Anek. *Democratisation in Southeast and East Asia*, (Singapore: Institute of Southeast Asian Studies, 1997).

<sup>38</sup> Alagappa, Muthiah (Ed), *Political Legitimacy in Southeast Asia*, (Stanford: Stanford University Press, 1995).

There are also several other important books which focused on general elections in Southeast Asia. One of those is *Electoral Politics in Southeast & East Asia*, edited by Aurel Croissant, Gabriele Bruns and Marei John.<sup>39</sup> This book discusses the election system exercised in several Southeast and East Asian countries, including Indonesia, Malaysia, Singapore and the Philippines. Besides discussing the election systems, this book also describes relevant issues such as irregularities of elections. There is also another book written by R.H Taylor by the title of *The Politics of Elections in Southeast Asia*.<sup>40</sup>

The above-mentioned books compare elections in Southeast Asia, including the political and historical aspects. However, few of the books are devoted to analysing court decisions over election cases. One of those books is *Malaysian Election Law* by Tunku Sofiah Jewa.<sup>41</sup> This four-volume book is a comprehensive treatise of elections in Malaysia. The selection and presentation of cases and materials in the book were designed to facilitate the discussion of problems that most frequently arise when elections are conducted.

In Indonesia, there are a few books addressing election offences. One with a legal perspective approach is a book by Sintong Silaban.<sup>42</sup> Meanwhile, several other books use social, political or economic approaches. One example is a book by Alexander Irwan and Edriana, *Pemilu: Pelanggaran Asas Luber*.<sup>43</sup> These books are not comparative studies and they only describe election offences in Indonesia.

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<sup>39</sup> Croissant, Aurel, Gabriele Bruns and Marei John (Eds), *Electoral Politics in Southeast & East Asia*, (Singapore: Friedrich Ebert Stiftung, 2002).

<sup>40</sup> Taylor, loc.cit.

<sup>41</sup> Tunku Sofiah Jewa, *Malaysian Election Laws*, Vol. 1 – 4, (Kuala Lumpur: Pacifica Publications, 2003).

<sup>42</sup> See Sintong Silaban, *Tindak Pidana Pemilu (Suatu Tinjauan Dalam Rangka Mewujudkan Pelaksanaan Pemilu Yang Jujur dan Adil)* [Election Offences, An Overview toward Free and Fair Election], (Jakarta: Sinar Harapan, 1992).

<sup>43</sup> See Alexander Irwan and Endriana. *Pemilu: Pelanggaran Asas Luber [General Election: Violation of Direct, General, Free, and Secret Principle]*, (Jakarta: Sinar Harapan, 1995). After the 1999 General Elections, several books were published that focused on general election offences. Just to mention several examples, see Hermawan Sulistiyo, et. al. *Kekerasan Politik dalam Pemilu 1999 [Political Violence on the 1999 General Elections]*, (Jakarta:

Discussing election offences leads one to discuss election disputes, as election offences can be used as a ground for election disputes. Comparative studies on election disputes are also rare. In this regard, Violaine Autheman stated that until recently few studies have been conducted concerning settlement of election disputes, which is of vital importance.<sup>44</sup>

Based on above-mentioned reasons, 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 election petition process. By means of this research, we can find out differences and similarities of some legal frameworks as well as their strengths and weaknesses. Finally, some recommendations could be proposed to strengthen the system of election offence settlement.

It can be stated that there has not been any significant study comparing election offences and their settlements in Southeast Asia. Therefore, this thesis fills an important gap by conducting a comparative study in order to analyse the weaknesses and strengths of these rules, and contribute to the improvement of the settlement system of such election offences.

In order to carry out a comparative study on the settlement of election offences in Indonesia, Malaysia, Singapore, and the Philippines, it is necessary to briefly describe the different legal systems of these countries. These important differences will then determine the position of each legal system in terms of the application of landmark court decisions on given election cases.

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KIPP Indonesia, 2000); Hermawan Sulistyono and A. Kadar, *Uang & Kekuasaan dalam Pemilu 1999 [Money & Power on the 1999 General Election]*, (Jakarta: KIPP Indonesia, 2000).

<sup>44</sup>Autheman, Violaine, "Penyelesaian Sengketa Berkaitan dengan 'Hasil Pemilu': Kilasan Praktek Peradilan di Beberapa Negara di Seluruh Dunia" [Settlement of Dispute concerning Result of Election: Court Practices in Some Countries of the World], Paper presented in Workshop: *The Role of Constitutional Court on Settlement of Election Disputes through a Transparent Court Process*, February, Bogor, 2004, at 22.

## Different Legal Systems

Indonesia is a civil law country as a consequence of long colonisation by the Dutch. As a civil law country, the written law is considered as a more important source of law. The civil law system places relatively less weight on prior judicial decisions. Different from common law judges who are bound by the doctrine of *stare decisis* to uphold case precedents, Indonesian judges are bound to no such doctrine. They are not bound by other judges' decisions, either higher or equal rank.<sup>45</sup> However, in practice, the exercise of such principle is relatively not strict. Even though *stare decisis* does not prevail, the lower judges to some extent feel bound by the decisions of higher level judges. This tendency occurs in order to hinder legal uncertainty, to prevent unnecessary expenses because of an appeal submitted by an unsuccessful party, and to prevent bad judgment from a superior judge.<sup>46</sup>

Differing from that, Malaysia and Singapore are common law countries which inherited the English common law tradition. In essence, the common law system of Singapore and Malaysia is characterised by the doctrine of judicial precedent (or *stare decisis*). According to this doctrine, when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where the facts are substantially the same; regardless of whether the parties and property are the same.<sup>47</sup> In this regard, the judges are only required to apply the *ratio decidendi* (or the operative reason for the decision) of the higher court within the same hierarchy.<sup>48</sup>

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<sup>45</sup> According to Purbacaraka and Soekanto, by quoting opinion of Ter Haar, *Stare Decisis* has also prevailed in Indonesia, particularly in Adat Court. Purnadi Purbacaraka and Soerjono Soekanto, *Perundang-undangan dan Yurisprudensi [Legislation and Case Law]*, (Bandung: Citra Aditya Bakti, 1993) at 57-58.

<sup>46</sup> Recently, the utilisation of court decisions, particularly Supreme Court decisions, by prosecutor, attorney and judge in Indonesian court proceeding have increased. *ibid.*

<sup>47</sup> Black, *op.cit.*, at 1406.

<sup>48</sup> *Tzi Yong Sam Sim*, A Guide to the Singapore Legal System and Legal Research, <http://www.Nyulawglobal.com/index.htm>. quoted at October 10, 2007. see also <http://www.singaporelaw.sg/content/LegalSyst.html>.



According to Lloyd, the special features of the present-day common law system of precedent may be summarised as:<sup>49</sup>

(i) a particular emphasis on judicial decisions as the core of the legal system; (ii) a very subordinate role conceded to juristic writings, as against decisions of the courts, in the exposition of the law; (iii) the treatment of certain judicial decisions as binding on other judges; and (iv) the form of judicial judgments and the mode of reporting these.

The application of *stare decisis* doctrine in Malaysia is clear, and this is affirmed by judges in several cases. As elaborated by Wan Arfah Hamzah and Ramy Bulan,<sup>50</sup> there are cases which explain this doctrine in Malaysia including *Public Prosecutor v Datuk Tan Cheng Swee*, *Kumpulan Perangsang Selangor v Zaid bin Haji Mohd Noh*, and *Co-operative Central Bank Ltd. v Feyen Development*. The previous case which explains the implementation of this doctrine both in Malaysia and in Singapore is *Mah Kah Yew v Public Prosecutor*.<sup>51</sup>

In *Public prosecutor v Datuk Tan Cheng Swee*, the federal judge said that:

“...it is however necessary to reaffirm the doctrine of *stare decisis* which the Federal Court accepts unreservedly and which it expects the High Court and other inferior court in a common law system such as ours, to follow similarly.”<sup>52</sup>

In *Kumpulan Perangsang Selangor v Zaid bin Haji Mohd Noh*,<sup>53</sup> the judge pointed out that the basic philosophy of common law is housed in the expression “certainty through precedent.” Meanwhile, in *Co-operative Central Bank Ltd. v Feyen Development* the judge said that:

“... it was necessary for each lower tier to accept loyally the decision of the higher tiers and chaotic consequences would follow should the lower tier fail in this duty. It was

<sup>49</sup> Freeman, M.D.A, *Lloyd's Introduction to Jurisprudence*, (London: Sweet & Maxwell LTD, 2001) at 1381.

<sup>50</sup> Wan Arfah Hamzah and Ramy Bulan, *An Introduction to the Malaysian Legal System*, (Shah Alam: Oxford Fajar, 2003) at 67-97.

<sup>51</sup> [1971] 1 M.L.J 1. For more explanation see Ahmad Ibrahim and Ahilemah Joned, *Sistem Undang-Undang di Malaysia [Legal System in Malaysia]*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2002) at 107-112. See also Noor Aziah Mohd Awal, *Pengenalan kepada Sistem Perundangan di Malaysia [Introduction to Malaysian Legal System]*, (Petaling Jaya: International Law Book Services, 2003) at 71-74.

<sup>52</sup> [1980] 2 M.L.J. 277.

<sup>53</sup> [1980] 2 M.L.J. 276,277.

therefore not open to an intermediate court of appeal, such as the court of appeal in this country, to disregard a judgment of a final court of appeal such as the Federal Court..."<sup>54</sup>

In the Philippines, the sources of law consist of statutory law and case law. Statutory law includes constitutions, treaties, statutes proper or legislative enactments, municipal charters, municipal legislation, court rules, administrative rules and orders, legislative rules and presidential issuance. The Philippine law is also derived from cases because the Civil Code provides that "judicial decisions applying to or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." However, only the decisions of the Supreme Court establish case law. These decisions are also binding on all other courts. These decisions assume the same authority as the statutes to which they apply or interpret.<sup>55</sup>

From the above-mentioned description, we can conclude that precedent has been the life-blood of the legal systems, but there is a different approach between common law and civil law as Lloyd has pointed out that "it is, of course, particularly prominent in the common law, but barely less so in the modern civil law."<sup>56</sup> This difference will have an effect on the settlement of election cases in Indonesia, Malaysia, Singapore and the Philippines with the civil law countries giving prominence to legislation whereas the common law countries must take into account judicial precedent.

## 1.6 Structure

This thesis consists of seven chapters. The chapters elaborate on the above-mentioned arguments. The first chapter is the introduction. This chapter covers background, problem

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<sup>54</sup> [1997] 2 M.L.J. 830.

<sup>55</sup> *Insular Life Assurance Co., Ltd., Employees Assoc., et al. v Insular Assurance Co., Ltd., et al* G.R. No. 25291, January 30, 1971. See De Vera, Gwen G, "History and the Generation of Decisional Rules," in *Philippine Law Journal*, Vol.80, September 2005, No. 1, at 26-52. See also Milagros Santos-Ong, *Philippine Legal Research*, <http://www.nyulawglobal.org/globalex/Philippines.htm>

<sup>56</sup> Freeman, op.cit., 1381.

identification, scope of research, methodology, literature review and the structure of the thesis. The discussion in the second chapter focuses on the international standards of democratic elections as general background and theoretical framework of this research.

In chapter three, a general overview towards legal framework of elections in four Southeast Asian countries, i.e., Indonesia, Malaysia, Singapore and the Philippines is laid out. The historical, political, and social as well as the legal aspects of the elections of the respective countries are discussed. In the last part of this chapter, the legal framework of the elections is also thoroughly examined.

Chapter four discusses the election offences, ranging from the definition and scope, purpose and its arrangement as well as model of regulation of election offences. In this chapter, the differences and similarities of election offences existing in Indonesia, Malaysia, Singapore and the Philippines are analysed. This chapter focuses on an election offence known as bribery which is considered as one of the most serious offence and a frequently committed offence.

Chapter five presents the settlement of election offences through the criminal process and some relevant problems and cases. Meanwhile, chapter six provides an analysis of the settlement of election offences through the election petition. After discussing various issues related to the settlement of election offences and comparing the arrangement in Indonesia to those in Malaysia, Singapore and the Philippines, the conclusion and recommendation are laid out in chapter seven.

## CHAPTER 2

### INTERNATIONAL STANDARDS ON ELECTIONS

*“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country”.*

(Article 25 International Covenant on Civil and Political Rights)

This chapter presents international standards which govern election offences. These standards are designated to create democratic elections as the instrument to achieve a democratic government. By elaborating on such standards, this research seeks to find the kind of standards needed to attain a democratic government. This chapter focuses on three issues that are integral to standard fifteen, namely protection from election offences, rights of aggrieved party to seek redress, and effect of irregularities on the outcome of elections.

#### 2.1 Free and Fair Elections

Looking at the present world situation, indirect democracy or democracy through representatives is the applicable political reality. Elections are the method to elect people's representatives. Indeed, the absence of competitive, honest and fair elections can be considered as the absence of democracy. According to Powell:

“In political systems with many people such as modern nations, government ‘by the people’ must, for the most part, be indirect. The people participate primarily by choosing policymakers in competitive elections. Such elections are instruments of democracy to the degree that they give the people influence over policy making.”<sup>1</sup>

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<sup>1</sup> Powell JR, G. Bingham, *Elections as Instruments of Democracy*, (New Haven: Yale University Press, 2000) at 3.

Powell's observation is precise and accurate. Democratic elections are the basis of government legitimacy. Without democratic elections, the government will lose its legitimacy and people's support. This notion is also in line with the Declaration of Principles for International Election Observation<sup>2</sup> which provides that:

“Genuine democratic elections are a requisite condition for democratic governance, because they are the vehicle through which the people of a country freely express their will, on a basis established by law, as to who shall have the legitimacy to govern in their name and in their interests. Achieving genuine democratic elections is a part of establishing broader processes and institutions of democratic governance.”

Genuine democratic elections or free and fair elections not only deal with whether electoral management body is impartial and effective, but also whether the candidate can carry out a campaign freely with support from the people. Highly related to free and fair elections is the issue of whether government resources are used appropriately during the election process; whether the military is neutral and acting as a professional organisation; and whether the police and attorneys maintain order and protect those who want to exercise their civil and political rights. Other important issues are whether the judicial institution is impartial and effective; whether the media is free in their presentation of accurate information and acting as a watchdog towards the government and political process, and whether the media provides access to candidates and objective coverage of candidates.<sup>3</sup>

An important element during this process is the development of people's trust towards elections. If citizens do not feel that they are free to exert their political choice, obtain adequate information for that purpose, and that their preference will be honoured, the election process will be insignificant. The candidates should feel that they have a fair opportunity to win votes – that

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<sup>2</sup> October 27, 2005

<sup>3</sup> Merloe, Patrick, *Pemilihan Umum Demokrati: Hak Asasi, Kepercayaan Masyarakat dan Persaingan Yang Adil*. [Democratic General Election: Human Rights, People's Trust and Fair Competition], (Jakarta: Dinas Penerangan Amerika Serikat, 1994) at 1.

is a “level playing field.” Moreover, candidates should feel that they will be encouraged to get involved in the process and to honour the results of elections. Thus, elections are closely related to events that have taken place prior to and following the elections.<sup>4</sup>

The institution, which is responsible for administering elections, should be independent and able to hold the process of elections fairly and effectively. Otherwise people will not trust the results of elections. Moreover, it is important to evaluate whether the election institutions, the police as well as the attorneys, adequately monitor these factors and take effective actions to prevent problems and investigate breaches. This is to ensure equality before the law and legal protection for all candidates.

As mentioned earlier, democracy requires free, fair and periodic elections.<sup>5</sup> In a democratic country, there is political equality. To have political equality, each citizen must have the same and effective opportunity in voting, and all votes must be counted equally. When the equality in voting is upheld, the general election is justifiably free and fair.<sup>6</sup>

Although free and fair elections are very important events, they are not ends in themselves. Elections are only means to bring about a legitimate and truly representative government. What are the features of free and fair elections? The indications of free and fair elections include the presence of a sentiment that reflects popular consent and participation in public affairs. It is something that emerges as the people feel that they have been consulted in public affairs. Other indications are the governments that can be readily replaced without

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<sup>4</sup> Ibid.

<sup>5</sup> Dahl, Robert A, *Perihal Demokrasi – Menjelajah Teori dan Praktek Demokrasi Secara Singkat* [Regarding Democracy – Briefly Exploring the Theory and Practices of Democracy], (Jakarta: Yayasan Obor Indonesia, 2001) at 132.

<sup>6</sup> Ibid.

violence or bloodshed, and when the politicians would not risk to become untouchable as they know they would be made accountable in the forthcoming elections.<sup>7</sup>

What are democratic elections? According to Jeane Kirkpatrick, scholar and former United States ambassador to the United Nations, democratic elections are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticise government, to publish their criticism and to present alternatives.<sup>8</sup>

## 2.2 Sources of International Standards on Elections

In order to obtain free and fair general elections we need certain international standards. Some international organizations have produced election standards:

- a. The Association of Central and Eastern European Election Officials (ACEEEO) produced a draft on 'Convention on Election Standards, Electoral Rights and Freedom';<sup>9</sup>
- b. The European Commission for Democracy through Law (Venice Commission) produced 'Guidelines on Elections';<sup>10</sup>
- c. The International Foundation for Electoral Systems (IFES) established 'Universal Standards for Free and Fair Elections';<sup>11</sup>
- d. The National Democratic Institute for International Affairs (NDI) introduced 'Democratic Elections: Human Rights, Public Confidence and Fair Competition';<sup>12</sup> and

<sup>7</sup> Abdul Aziz Bari, *Malaysian Constitution: A Critical Introduction*, (Kuala Lumpur: The Other Press, 2003) at 218.

<sup>8</sup> Merloe, *op.cit.*, 16.

<sup>9</sup> [http://www.cikrf.ru/conference/conference\\_en\\_konv.htm](http://www.cikrf.ru/conference/conference_en_konv.htm)

<sup>10</sup> [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)013-e.html](http://www.venice.coe.int/docs/2002/CDL-AD(2002)013-e.html)

<sup>11</sup> [http://www.ifes.org/reg\\_activities/Pdf/05\\_21\\_02\\_angola\\_eng\\_annex2.pdf](http://www.ifes.org/reg_activities/Pdf/05_21_02_angola_eng_annex2.pdf)

<sup>12</sup> [http://www.accessdemocracy.org/NDI/library/005\\_ww\\_demelections.pdf](http://www.accessdemocracy.org/NDI/library/005_ww_demelections.pdf)

e. The Southern Africa Development Community (SADC) formed Parliamentary Forum 'Norms and Standards for Elections in the SADC Region'.<sup>13</sup>

All these standards which are developed by such organisations are based on various international, regional declarations and conventions, as well as UN declarations and conventions regarding human rights<sup>14</sup> and other related legal instruments. These principles and standards were developed, acknowledged and utilised by the international community to provide guidance in determining the integrity and legitimacy of elections.

The most important documents are the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights, which enshrine the overarching rights of citizens to expression of their will through periodic elections, universal and equal suffrage, and free voting procedures.<sup>15</sup>

Pursuant to the Universal Declaration of Human Rights, the will of the people is the basis of authority of government.<sup>16</sup> The mechanism chosen by the international community for the expression of this will is the electoral process. In order to have a valid and genuine expression of the will of the people, these elections must be "free and fair".<sup>17</sup>

The essence of free and fair elections is the extent to which they facilitate the full expression of the political will of the people. Fundamental to this requirement is that elections be conducted in an atmosphere characterised by an absence of fear and intimidation, and in the

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<sup>13</sup> [http://www.accessdemocracy.org/NDI/library/1372\\_elect\\_sadcpf\\_normsstandards.pdf](http://www.accessdemocracy.org/NDI/library/1372_elect_sadcpf_normsstandards.pdf)

<sup>14</sup> International standards on elections involve three central rights: the right to take part in government; the right to vote and to be elected; and the right to equal access to public service. The Universal Declaration of Human Rights further states that the will of the people shall be the basis of the authority of government. Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant on Civil and Political Rights.

<sup>15</sup> United Nations General Assembly Resolution 217A (III), 10 December 1948; and United Nations General Assembly Resolution 2200A (XXI), United Nations document A/6316, 16 December 1966, entered into force 23 March 1976.

<sup>16</sup> Article 21 of the Universal Declaration of Human Rights.

<sup>17</sup> ANFREL and FORUM ASIA, *Malaysia- Report of the 1999 Election Observation Mission*, (Bangkok: ANFREL and FORUM ASIA, 2000) at 18.



presence of a wide range of fundamental human rights, including the rights to free opinion, free expression, information, assembly and association, independent judicial procedures, and protection from discrimination.<sup>18</sup>

In 1996, the UN Human Rights Committee, which has a supervisory role under the 1966 International Covenant on Civil and Political Rights, established International Standards of Elections (The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service).<sup>19</sup> The standards cover, among others:<sup>20</sup>

- a. requirement to adopt legislative and other measures to ensure that citizens have effective opportunities to enjoy the rights they protect;
- b. ensuring freedom of expression, assembly and association;
- c. the right to vote at elections must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote;
- d. full protection of freedom of expression, assembly and association which are the essential conditions for an effective exercise of the right to vote ;
- e. elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights;
- f. persons entitled to vote must be free to vote for any candidate for election and free to support or to oppose government, without undue influence or coercion;
- g. voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.

<sup>18</sup> The United Nations Centre for Human Rights, *Professional Training Series No. 2, Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections* (1994, 10).

<sup>19</sup> General Comment 25, 510th meeting, 57th session.

<sup>20</sup> Elklit, Jørgen and Svensson, Palle, 'What Makes Elections Free and Fair?'. *Journal of Democracy*, vol. 8, no. 3, July 1997. See also Goodwin-Gill, Guy S., *Free and Fair Elections*, Inter-Parliamentary Union, 1994. <http://www.ipu.org/english/books.htm>

Other international instruments are: 1950 European Convention (together with its protocol) for the Protection of Human Rights and Fundamental Freedoms, 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE), the 1948 American Declaration of the Rights and Duties of Man, the 1969 American Convention on Human Rights, and the 1981 African Charter on Human and People's Rights.<sup>21</sup>

The Organisation of Democratic Institution and Human Rights (ODIHR)-(OSCE) and the Institute for Democracy and Electoral Assistance (IDEA) have published more comprehensive standards to ensure democratic election.<sup>22</sup> The comprehensive standards are a set of international benchmarks which can be applied to measure or analyse the legal framework of a country to ensure a democratic election. By this standard, the level of accuracy, condition, consistency, uniformity, and professionalism in holding elections can be assessed.<sup>23</sup>

As mentioned in chapter one, the comprehensive standards is accumulation of all the international instruments mentioned above and are made up of fifteen election standards which are internationally acknowledged to include the following areas: (1) structuring the legal framework, (2) the electoral system, (3) boundary delimitation, districting or defining boundaries of electoral units, (4) the right to vote and to be elected, (5) electoral management bodies, (6) voter registration and voter registers, (7) ballot access for political parties and candidates, (8) democratic electoral campaigns, (9) media access and freedom of expression, (10) campaigns finance and expenditure, (11) balloting, (12) votes counting and tabulating, (13) role of the

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<sup>21</sup> International IDEA, *International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2002) at 7.

<sup>22</sup> *Id* at 5.

<sup>23</sup> *Id* at 5-6.

representatives of the parties and candidates, (14) electoral observers, and (15) compliance and enforcement of electoral law.<sup>24</sup>

In accordance to the main focus of this thesis, namely settlement of election offences, this chapter emphasizes the last standard, namely “compliance and enforcement of electoral law.” However, it is important to describe briefly all the fifteen standards.

The first standard is structuring the legal framework. Referring to the United Nations Human Rights Standards regarding Elections, guarantees for the fundamental right of periodic free and fair elections with universal, equal and non-discriminatory suffrage and secret balloting, and for the right to be elected and to have access to the public service on equal terms, should be enshrined in the Constitution or other high organic law of the state.<sup>25</sup> The legal framework must be arranged in such a manner that it is not ambiguous, can be understood and open in nature, and must highlight all elements of the electoral system required for ensuring democratic elections.<sup>26</sup>

Regarding legal framework, the International Electoral Standards developed by IDEA maintain that:

“A country may adopt a separate law on the “basic principles” of elections, which defines provisions that are applicable to all elections. Additionally, that country may also adopt separate laws containing provisions specific to individual elected institutions, or other elections. In contrast, another country may include the entire election legislation in one law with separate chapters containing provisions for the various elected institutions or other elections.”<sup>27</sup>

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<sup>24</sup> See International IDEA, (2002) and International IDEA, *Kerangka Hukum Pemilu Indonesia Tahun 2004* [Legal Framework of the Indonesian 2004 General Election], (Jakarta: IDEA, 2004).

<sup>25</sup> United Nations, *op.cit.*, 17.

<sup>26</sup> Based on this, there are several matters in the legal framework of a country that should be examined, such as whether basic political rights (the right to vote and to register as voter, the right to nominate himself for public position) are guaranteed by a legal framework and whether all statutory regulations relating to general elections have been reviewed in order to conform to the integral objective of general election. International IDEA (2002), *op.cit.*, 13-22.

<sup>27</sup> International IDEA (2002), *id* at 14.

There are several questions related to the first standard, one of which is whether fundamental suffrage rights, such as the right to vote and register as a voter, the right to run for a public office etc., are safeguarded by constitutional guarantees.

The second standard is the electoral system. The electoral system is the method by which votes cast in an election are translated into seats won in parliament by parties and candidates. Some systems may give primacy to a close relationship between the overall votes cast and the seats won (proportionality), or they may funnel the votes (however distributed among parties) into a parliament that consists of just a few parties. Another important function of an electoral system is to act as the conduit through which citizens can hold their elected representative accountable.<sup>28</sup> Concerning electoral system, Eric Bjornlund<sup>29</sup> pointed out that:

“Details of an electoral system, such as the number of candidates elected from a given area, can substantially affect the outcome of an election and in turn influence the nature of a country’s government. These details can substantially affect proportionality, voter participation, minority party representation, the likelihood of coalition government, the number of women and ethnic minority office holders, the prospect for genuinely representative constituencies, and the range of participating and winning candidates and parties.”<sup>30</sup>

The choice of the electoral system should ensure that the international standards for democratic election are complied with, in relation to the appointed institution, election frequency, and election unit organisation. The choice of an electoral system must ensure that the political division of a community is properly observed by the election legal framework. Therefore, main disagreement and difference can be accommodated through the political representative system. Based on this, it can be examined whether the election legal framework

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<sup>28</sup> Andrew Reynolds, “Designing Electoral Systems,” in *Crafting Indonesian Democracy* (ed) R. William Liddle, (Bandung: Penerbit Mizan, 2001) at 89.

<sup>29</sup> Election expert from Democracy International, United States.

<sup>30</sup> Bjornlund, Eric, *Elections in a Democratizing World*.

[http://usindo.state.gov/dd/eng\\_democracy\\_dialogues/elections.html](http://usindo.state.gov/dd/eng_democracy_dialogues/elections.html) cited on March 17,2008.

governing electoral system of a country has provisions which enable votes to be translated into elected seats.<sup>31</sup>

In general, electoral systems can be classified into four major categories:<sup>32</sup> plurality, majoritarian, proportional representation, and mixed (or hybrid) systems. The plurality electoral systems are known as the first-past-the-post (FPTP) elections. In this system, a candidate needs to simply win more votes than all other candidates. The system is normally associated with single-member constituency. The second major category is Majority System. This system requires that only candidates with clear majority votes (more than 50 per cent of votes) be declared the winners.<sup>33</sup>

Next is Proportional Representation Systems which are used in multi-member constituencies. This system is considered as the fairest of all systems in terms of translating the voters' choice into representation. This system can be distinguished into two variants: the list system<sup>34</sup> and the single transferable vote system.<sup>35</sup> The last major category is Mixed Systems. This is an adoption of different electoral systems simultaneously. This can be a combination of plurality and proportional systems.<sup>36</sup>

Although the electoral system is not the main focus in this thesis, it is important to compare electoral systems applied in these selected countries and to relate them to the international standards of electoral system. For example, there was an important proposal to change the electoral system in Indonesia during Soeharto's regime, because it was considered as

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<sup>31</sup> Several other problems related to electoral system can be further viewed in International IDEA (2002), *op.cit.*, 23-27.

<sup>32</sup> Abdul Rashid Moten (Ed), *Government and Politics in Malaysia*, (Singapore: Cengage Learning Pte, 2008) at 163-166.

<sup>33</sup> There are several variants of the system including: majority-runoff system, majority-plurality, and alternative vote system.

<sup>34</sup> In this system the outcomes are determined by the percentage of votes garnered by the political parties. Abdul Rashid Moten, *op.cit.*, at 165.

<sup>35</sup> In this system there is no party list and voters would rank order their preference. *Ibid.*

<sup>36</sup> *Ibid.*

part of Soeharto's strategies to keep his post indefinitely. One advanced research conducted by the Indonesian Science Institute (LIPI)<sup>37</sup> came up with a recommendation to change the electoral system gradually in three general elections. However, this proposal was rejected by Soeharto's regime.

According to the international electoral standards, there is no "best" electoral system suitable to all and no universally recognized standards.<sup>38</sup> However, as a general principle, international standards require that all seats in at least one chamber of the national legislature be freely contested on a popular vote, held at reasonable intervals as established by law.<sup>39</sup>

The third standard is constituency delimitation. The process of identification of electoral districts and boundaries should respect the international norms of equal suffrage. Such delimitation should not be designated to dilute or discount the votes of any particular groups or areas.<sup>40</sup> The legal framework regarding this matter must ensure that the boundary of election units was created in such a manner in order to achieve the objectives in accordance with the equal load for each vote, up to the highest degree to the possible extent to achieve effective representation.<sup>41</sup>

Regarding constituency or boundary delimitation, Lisa Handley<sup>42</sup> notes that boundary delimitation has a role in determining electoral outcomes, but this often receives inadequate attention in assessing the credibility of the election process. According to Handley there are

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<sup>37</sup> The research was conducted in 1995/1996.

<sup>38</sup> International IDEA (2002), *op.cit.*, 23.

<sup>39</sup> *Id* at 24.

<sup>40</sup> United Nations, *op.cit.*, 15.

<sup>41</sup> International IDEA (2002), *op.cit.*, 29.

<sup>42</sup> President of an election consulting firm specializing in voting rights and electoral boundary delimitation

some fundamental principles on boundary delimitation that should be taken into account including: impartiality, equality, representativeness, non-discrimination and transparency.<sup>43</sup>

Considering the fact that constituency delimitation is very critical to the outcome of elections and often criticized, some countries have established a special institution to design and decide constituencies, for example German has set up “*Wahlerkommission*” and the United Kingdom has a “Boundary Commission” to assist it’s Election Commission.<sup>44</sup>

There is a notorious practice, namely “Gerrymandering” which enable one party or candidate to take advantage of the constituency delimitation. This kind of practice occurs when a constituency is highly crucial to a certain political party or candidate and the political party has a majority in the legislature with power to influence or determine the constituency delimitation.<sup>45</sup>

Recently, American politics have to overcome the so called “Hyperactive Gerrymander Syndrome.” According to Edward B. Foley:<sup>46</sup>

“...this malady is marked by two distinguishing features: first, the calculating use of increased computer power to determine exactly what district lines will give one political party the greatest possible electoral advantage over the other; and second, the redrawing of these district lines every year rather than every decade. The consequence of this disease is that American politics have become much more ideologically polarized and polemical than previously, with moderate swing voters unable to control the outcomes in most districts.”

The recent gerrymander cases are *Vieth v Jubilerer* and *Bush v Gore*. Both cases involved claims that a state's election procedures violated the Federal Equal Protection Clause. In *Bush v Gore*, the Court embraced the Equal Protection claim, shutting down the Florida recount

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<sup>43</sup> See Handley, Lisa, “Boundary Delimitation” in *Challenging the Norms and Standards of Election Administration*, (IFES, 2007) at 59-74.

<sup>44</sup> Pipit R. Kartawidjaja and Sidik Pramono, *Akal-akalan Daerah Pemilihan [Constituency Cheating]*, (Jakarta: Perludem, 2007) at 18. The role and function of The Boundary Commission is governed in *Boundary Commission Act 1992*.

<sup>45</sup> See more discussion in Pipit R. Kartawidjaja and Sidik Pramono. *Ibid*.

<sup>46</sup> Edward B. Foley, *The Missed Opportunity of Vieth, June 22, 2004*, [electionlaw@osu.edu](mailto:electionlaw@osu.edu).

in 2000. In *Vieth*, the Court rejected the Equal Protection claim, even if the gerrymander there intentionally and effectively foreclosed majority rule in Pennsylvania elections.<sup>47</sup>

It must be noted that the “Gerrymandering” problem is not the problem faced only by western democratic countries, but has already appeared in transitional democratic regions, such as Southeast Asia. The recent development in Indonesian legal framework in fact faces such a problem.

Before moving to the next standard, we need to highlight one question in the IDEA’s International Electoral Standard check list: does the legal framework provide for an impartial, non-partisan, independent and professional body of persons or an institution to undertake boundary delimitation? In the next chapter we will see how the legal framework of Indonesia, Malaysia, Singapore, and the Philippines response to this question.

The fourth standard is the right to elect and to be elected. The legal framework must ensure that all citizens fulfilling the legal requirements are guaranteed to be entitled to vote universally and fairly, as well as to participate in elections without discrimination.<sup>48</sup> With regard to the right to be elected, it is important to note that the requirements of a candidate should be provided clearly in the legal framework.<sup>49</sup>

The right to vote or to elect is an standard which has been adopted by many countries as reflected in the Declaration on Criteria For Free And Fair Elections by the Inter-Parliamentary Council.<sup>50</sup> In this declaration the Inter-Parliamentary Council stated that:

(1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.

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<sup>47</sup> Edward B. Foley, “Comparing Two Cases,” <http://moritzlaw.osu.edu/electionlaw/faculty/foley.php> cited on March 28, 2008.

<sup>48</sup> International IDEA (2002), op.cit. 35. Article 21 (3) of the Universal Declaration of Human Right. Article 25 of the International Covenant on Civil and Political Rights.

<sup>49</sup> Declaration on Criteria For Free And Fair Elections by the Inter-Parliamentary Council, Paris, 26 March 1994

<sup>50</sup> Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994)



(2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.

(3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.

(4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.

(6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.

(7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

By virtue of this principle, there should be equal and non-discriminatory suffrage particularly for women. In this regard, we may look at the Convention on the Political Rights of Women (1953). This convention came into force on July 7, 1954. Article 1 of this convention stated that "Women shall be entitled to vote in all elections on equal terms with men, without any discrimination." Moreover, Article II provides that: "Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination."

The other important issue related to the equal and non-discriminatory suffrage is the electoral rights of prisoners. In this regard, the Council of Europe has recommended that:<sup>51</sup>

"If the law allows electors to vote without personally visiting the polling-booth, a detainee shall be allowed this prerogative unless he has been deprived of the right to vote by law or by court order. A prisoner permitted to vote shall be afforded opportunities to be informed of the situation, in order to exercise his right."

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<sup>51</sup> Council of Europe, Recommendation 195, Resolution (62) 2, 1st February 1962).

With regard to the right to vote, the important thing is that the legal framework ensures that suffrage rights are exercised in a non-discriminatory manner on the basis of equal treatment before the law.

The next standard is electoral management bodies. The legal framework must obligate a general election organising institution to be formed and functions in a manner capable of assuring independent and just elections.<sup>52</sup> Provisions of the law should ensure that an objective, unbiased, independent and effective administrative structure is in place.<sup>53</sup>

This standard is highly essential to achieve free and fair elections. The more independent and capable the electoral management bodies in a country, the more opportunity for the country to implement all election principles with the support of its people. In a country in which election bodies are highly influenced by the ruling government, it is difficult to establish a “level playing field.”

There are different characteristics (position, role, authority, and structure) of election management bodies in Indonesia, Malaysia, Singapore, and the Philippines. Regardless of the differences, the most important thing is the mandate of the electoral management bodies to conduct elections according to guiding principles of democratic elections, in a fair, efficient and effective manner.

Regarding composition and qualification of electoral management bodies (EMBs), a common provision requires that at least some members of EMBs, at every level, have a background of training in law.<sup>54</sup> It is also important to note that there are critical attributes of the

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<sup>52</sup> International IDEA, (2002), op.cit., 39.

<sup>53</sup> United Nations, op.cit., 16.

<sup>54</sup> International IDEA, (2002), loc.cit.

electoral management bodies, include the following: independence and impartiality, efficiency and effectiveness, professionalism, impartial and speedy adjudication, and transparency.<sup>55</sup>

The sixth standard is registration of voters. Legal framework must obligate the storage of voters' register in a transparent and accurate manner, protecting the rights of the citizens fulfilling the requirements to register, and preventing registration or removal by unlawful or unauthorized person.<sup>56</sup>

With respect to voter or electoral register, we may refer to the legal framework in the United Kingdom in which the responsibility for the compilation of the register lies with the electoral registration officer. The electoral registration officer has to ascertain those who are eligible for inclusion on the qualifying day. At a certain period of time a provisional register should be published and publicised so that it may be checked. Any objections (either as to inclusion or exclusion) should be heard and determined by the electoral registration officer and the appropriate corrections made. The decisions of the officer may be appealed to the court.<sup>57</sup>

It is important to note that the residence and physical aspect of the voter is one important issue in the electoral register. In Great Britain a person needs only an established residence on the qualifying date, while in Northern Ireland residence must be established for a three-month period. In *Fox v Stirk*,<sup>58</sup> the Court of Appeal held that students could be registered at their term-time address on the basis that their residence at that address had a considerable degree of permanence. In *Hipperson v Newbury District Electoral Registration Officer*,<sup>59</sup> the Court of Appeal held that women who were members of the "peace camp" beside the air-force base at

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<sup>55</sup> Id at 43.

<sup>56</sup> Id at 49.

<sup>57</sup> Thompson, Brian, *Textbook on Constitutional & Administrative Law*, (London: Blackstone Press Limited, 1993) at 154.

<sup>58</sup> [1970] 2 QB 463 quoted in Thompson, id at 153-154.

<sup>59</sup> [1985] QB 1060 quoted in Thompson, ibid.

Greenham Common and lived in tents, vehicles and the open air could be regarded as resident there and so included in the register.<sup>60</sup>

Voter registration irregularity is also a problem faced by other developed countries such as the United States. During the 2004 Elections there were allegations of voter registration fraud made by both parties in many states. In Colorado at least 719 cases of potentially fraudulent forms were submitted.<sup>61</sup> Months prior to the election, the Citizens Alliance for Secure Elections filed a suit against the Cuyahoga County (Ohio) Board of Elections, claiming that they botched or failed to file the registration of at least 10,000 voters.<sup>62</sup>

Considering the fact that many disputes in elections resulted from irregularities or inefficiency in the registration phase, it is important to pay more attention to the legal framework governing registration of electors. Different mechanisms of voter registration are used in these selected countries. Whatever the mechanism is in place, the protection of the right to vote should be the ultimate goal of the provisions. It is very critical that the government and the electoral management body conduct the registration of voters and update of electoral rolls and balloting procedures effectively.

It can be learnt from *Diaz v Hood*<sup>63</sup> that technicalities during the process of voter registration should not undermine the right to vote. The issue in this case is whether disenfranchisement based on the failure to provide information as to voter eligibility violates voters' equal protection rights when voters sign a general oath stating that they are eligible to vote under applicable state law.

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<sup>60</sup> Thompson, id at 153.

<sup>61</sup> Sherman, Deborah. "I-Team investigation uncovers voter registration fraud", 9News, 2004-10-11.

<sup>62</sup> 2004 United States presidential election controversy and irregularities, <http://en.wikipedia.org/w/index.php> cited on March, 20, 2008.

<sup>63</sup> U.S. District Court Southern District of Florida (*Case 04-22572*); 11th Circuit Court of Appeals (*Case 04-15539*)

In this case, several Florida voters sought injunctive relief requiring the names of individuals who submitted incomplete registration applications to be added to the list of voters registered for the November 2004 elections. Voters in Florida were required to check several boxes when registering to vote; such boxes include information regarding citizenship, mental competency and whether the applicant is a felon. In this case, several applicants were denied their right to vote due to the failure to mark these boxes, although they signed a statement stating that they were eligible to vote under Florida law. The plaintiffs allege that these are non-material omissions, they were not notified of the error, and they were not given a chance to remedy the error. The Court originally dismissed this action as the unions did not identify any specific union members who were injured, and there was evidence that individual plaintiffs were notified of the error and at least one corrected the same and was eligible to vote. However, the 11th Circuit Court of Appeals ruled that the plaintiffs did have standing and allowed for the filing of a new complaint.

The next standard is ballot access for political parties and candidates. The legal framework should ensure that all political parties and candidates could compete in an election on the basis of fair treatment.<sup>64</sup> The legal framework must ensure that each political party and candidate enjoys the right to freedom of expression and freedom to associate, and access to voters. It must also ensure that all of the related parties (stakeholders) in the election process have the same success opportunity. The legal framework must clearly state the type of behaviours prohibited during the election campaign.

Regarding such standard, the IDEA's Guidelines Series on International Electoral Standards has raised several questions, two of those are: (1) does the legal framework provide a level playing field for registration and ballot access for all political parties and candidates; (2)

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<sup>64</sup> United Nations, *op.cit.*, 55.

does the legal framework provide for a timely appeal to expeditiously review the decisions made on party and candidate registration.<sup>65</sup>

The electoral campaign period should normally be well defined and should commence after the valid nomination of parties and candidates, ending one or two days before polling. The legal framework should state in clear language what type of conduct and behaviour are prohibited during the electoral campaign. Provisions regulating the conduct of political parties and candidates or references to codes of conduct may be provided in the electoral law or the criminal law. Provisions for a free electoral campaign should be backed by reasonable, effective and credible sanctions regime, including criminal or civil sanctions. Other specific electoral penalties, such as the disqualification of candidates or parties, are also part of the sanctions.<sup>66</sup> The procedure and mechanism to handle complaints and disputes during campaign period also need to be stipulated in the legal framework.<sup>67</sup> This is the eighth standard, which is essential to democratic electoral campaigns.

The next standard is media access and freedom of expression. The legal framework must guarantee that all political parties and candidates have access to the media. It also has to ensure that they are fairly treated by the media owned or controlled by the state. In addition, there is to be no restriction over the freedom and the right of expression for the political parties and candidates during the campaign period.<sup>68</sup> Arrangement for fair media access by candidates and parties are an important focus of electoral law.<sup>69</sup>

The allegation of limited media access and freedom of expression in several Southeast Asian countries is an issue that attracts the attention of domestic and international observers.

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<sup>65</sup> International IDEA, (2002), *op.cit.*, 53.

<sup>66</sup> *Id* at 55-60.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Id* at 67-71.

<sup>69</sup> United Nations, *loc.cit.*

This might be a result of the political environment in certain countries which limits the freedom of the press especially during an election. The political situation during Indonesia's New Order could be considered as the best example of government's repressive practice toward the media. Up to present, the same allegation exists in Singapore and Malaysia. However, the process and result of the 2008 General Elections in Malaysia which were praised by observers,<sup>70</sup> could answer the criticisms and allegations. The situation was happening in Indonesia after the 1999 and 2004 General Elections.

The issue of media limitation is not only a monopoly of developing countries. In the United States, the same problem arose. During the 2004 presidential election, there has been complaint by concerned citizens that the corporate media has not given enough coverage to the issue, or has in fact intentionally minimized coverage and public awareness.<sup>71</sup>

Although numerous publications have covered the voting process leading up to, during and following the elections, the allegation of a "media lockdown" has persisted and grown as the majority of coverage and insight into election irregularities has taken place in the alternative media (independent/local media, internet media, etc.).<sup>72</sup>

The tenth standard is campaign finance and expenditure. In this respect, Jacobson as quoted by Ibrahim and Luky pointed out that:<sup>73</sup>

"Money is not sufficient, but is necessary for successful campaign. Money is necessary because campaigns do have impact on election results and campaign cannot be run without it."

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<sup>70</sup> See Samsul Hadi, "Selamat Datang Malaysia Baru" [Welcome New Malaysia], Kompas, March 14, 2008.

<sup>71</sup> Jurkowitz, Mark. "Media accused of ignoring election irregularities", The Boston Globe, 2004-11-17. Spencer, Miranda (March/April 2005). Americas Broken Electoral System. Fairness and Accuracy in Reporting. Retrieved on 2006-05-19.

<sup>72</sup> *ibid.*

<sup>73</sup> Ibrahim Fahmi Badoh and Luky Djani, *Korupsi Pemilu [Electoral Corruption]*, (Jakarta: Indonesian Corruption Watch, 2006) at 11.

The legal framework must ensure that all political parties and candidates are treated fairly by the legal provisions stipulations on campaign finance and expenditure.<sup>74</sup> The internationally-recognized standards provide that there should be a transparent system of disclosure of the funding received by any party or candidate. There should be no discrimination concerning access to public funds for any party or candidate. Besides that, there should be a level playing field among the parties or candidates.<sup>75</sup>

In some countries, such as the United Kingdom, the campaign finance has been governed by the legal framework, specifically in expenditure rules. According to the rules, every candidate must appoint an election agent who is to be responsible for making the election return, which is an account of the expenses incurred in the campaign. The maximum which may be spent in a constituency is composed of two elements: a flat amount and a sum of every registered voter in the constituency. Candidates may not spend money in attempts to treat, or bribe or exercise undue influence over voters. It is a corrupt practice for expenditure to be incurred to promote a candidate who was not authorised by the election agent.<sup>76</sup>

The next standard is balloting. To be successfully conducted, free and fair elections should be guided by detailed provisions regarding the form of ballots, the design of ballot boxes and voting compartments, and the manner of polling. These provisions should protect the process from fraudulent practices and respect the secrecy of the vote.<sup>77</sup>

The twelfth standard is counting and tabulating votes. The legal framework must ensure that all votes are counted and tabulated accurately, evenly and openly. Fair, honest and open vote counting is the basis of democratic election. This requires vote counting, tabulation, and

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<sup>74</sup> International IDEA (2002), op.cit., 73.

<sup>75</sup> Id at 65-66.

<sup>76</sup> *Representation of the People Act 1983*, sections 74,75 and 76.

<sup>77</sup> International IDEA (2002) op.cit., 79.



consolidation to be attended by the representatives of parties and candidates as well as electoral observers, and to ensure that all process to determine the winner is truly open to the public.<sup>78</sup>

This standard is very critical and in need of significant attention. Voting and counting is the last phase in an electoral process. If this phase is overwhelmed by irregularities then the outcome of the election is adversely affected. The long process during counting and compiling votes might be hampered by falsification of the document or alteration of the result. There are many election offences reported during this phase. That is why the legal framework of general elections should establish strong protection in this particular area.

The thirteenth standard is the role of representatives of the parties and candidates. To protect the integrity and openness of an election, the legal framework must contain provisions stipulating that representatives appointed by the parties and candidates participating in the general elections must observe all voting process. The rights and liabilities of the candidates and parties' representatives at the voting location must also be specified in the legal framework.<sup>79</sup>

The fourteenth standard is electoral observer. To ensure transparency and to improve credibility, the legal framework must stipulate that the electoral observers may observe all stages of the election process.<sup>80</sup> Election observation is an essential component of an election process. It can deter fraud and irregularities and plays a vital role as a transparency check that promotes accountability. This in turn can reduce violence and encourage participation.

The focal point of election observation is its capability to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations

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<sup>78</sup> Id at 85.

<sup>79</sup> Id at 91.

<sup>80</sup> Id at 97.

for improving electoral processes. It can promote public confidence, as warranted, promote electoral participation and mitigate the potential for election-related conflicts.<sup>81</sup>

Lastly, the fifteenth standard is compliance and enforcement of electoral law. In this standard, it is important to note that the legal framework should provide effective mechanism and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for specific electoral offences. The legal framework for elections must set forth detailed and sufficient provisions protecting suffrage rights.<sup>82</sup> This last standard is the main focus of this thesis and will be elaborated further below.

### **2.3 Compliance and Enforcement of Electoral Law**

The last standard is crucial to ensuring fair elections. Related to the standard, it is provided that:

“The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent electoral management bodies (EMB) or court when an infringement of electoral rights is alleged to have occurred. The law must require that the appropriate EMB or court render a prompt decision to avoid an aggrieved party losing his/her electoral right. The law must provide a right of appeal to an appropriate higher level of EMB or court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must be issued promptly.”<sup>83</sup>

With regard to the decision to the complainant, the international standards provided that:

“The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. Prompt resolution can frequently prevent escalation of a minor complaint into a major

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<sup>81</sup> Declaration of Principles for International Election Observation, Commemorated October 27, 2005, at the United Nations, New York.

<sup>82</sup> International IDEA, (2002), op.cit., 93.

<sup>83</sup> Id at 93-94.

problem. However, certain types of disputes in some jurisdictions can only be raised by means of an election petition after the electoral process has concluded.<sup>84</sup>

With respect to the last standard, the United Nations guidelines affirm that the national electoral law must protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice. Civil and criminal liability should be imposed for the acts of misfeasance, nonfeasance and malfeasance by election officials. The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the power of the independent judicial body charged with such review. The effect of irregularities on the outcome of elections must be established by law. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress.<sup>85</sup>

Referring to these guidelines, there are at least three important matters that must be considered. First, it is concerning the protection of political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices. Civil and criminal liability should be imposed for the acts of misfeasance, nonfeasance and malfeasance by election officials. This provision gives more emphasis on the substantive law, i.e. the occurrence of any violations, and sanctions over such violations. The objective to be achieved is “protection of election processes from fraud.”

Enforcement is a deterrent to fraud and a guard against problems that threaten the electoral integrity. Dishonest or fraudulent practices are not the only source of integrity problems. They may also result from human error or unintentional omissions. Even when there is

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<sup>84</sup> Ibid.

<sup>85</sup> United Nations, loc.cit.

no ill intent, these mistakes also need to be subject to corrective measures. Different institutions and mechanisms may be responsible for enforcing election integrity and legislation, as specified by each country's legal framework.<sup>86</sup>

Second, it is concerning the right to challenge election results and for aggrieved parties to seek redress. This matter should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the power of the independent judicial body charged with such review. This provision gives more emphasis on the procedural law, i.e., how the aggrieved party (candidate or political party) in the election can fight for its right by petitioning the election results.

Regarding the importance of the challenging result mechanism, Phil Green and Louise Olivier have mentioned that:<sup>87</sup>

“A mechanism for challenging results is desirable at every stage of the vote counting process. This helps to ensure that the election process is transparent, that election authorities are accountable, and that the election outcome is acceptable to all parties. Aggrieved parties and candidates must be able to challenge results based on factual information and are entitled to an independent and fair hearing on the merits of their case. Effective mechanisms for challenging results add to the credibility of an election outcome. If a party to an election is not satisfied that an election has been properly conducted, the ability to effectively challenge the election result will ensure that any genuine errors are corrected, and that any fraudulent activities are identified and dealt with. Conversely, if concerns are baseless, the process of challenging an election outcome should provide the public with this information. This will enhance the credibility of the outcome.”

Moreover, they pointed out that:

“If an election cannot be challenged to the satisfaction of all parties, then it is possible that the election outcome will not be accepted, leading to civil or political tension and violence.”

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<sup>86</sup> Dobrzynska, Agnieszka, “Enforcement of Electoral Integrity,” September 08, 2006.

<http://aceproject.org/aceen/topics/>

<sup>87</sup> Phil Green and Louise Olivier, “Challenging Results (Mechanisms for Challenging Results),” August 10, 2007.

<http://aceproject.org/ace-en/topics/vc>

Election results can be challenged in several ways and at several points in the process : 1) Challenging results during the vote count; 2) Recounts by Electoral Bodies; 3) Challenging election results before a court or tribunal.<sup>88</sup>

As far as the time is concerned, it is important to provide a time limit for the settlement. The long process can destabilize a sensitive political environment, and leads to civil unrest. For these reasons, it is important that election challenges are dealt with quickly, efficiently, and with maximum transparency and accountability. It is also essential that election challenges do not unreasonably delay the election process.<sup>89</sup> Delays in the formation of parliaments and governments may lead to civil or political unrest.<sup>90</sup>

Regarding the complaint mechanism, the law as practiced in the United Kingdom provides valuable guidance. According to Part III of the *Representative of the People Act 1983* the validity of a Parliamentary election may be challenged by unsuccessful candidates or electors by making an election petition to an election court. This petition is for inquiry into the validity of elections of members of parliament when it is alleged that the return of a member is invalid for bribery or any other reasons.<sup>91</sup>

The election court is composed of two judges from the Queen's Bench Division. Historically, dispute about elections were dealt with by the House of Common itself as matters within its privilege because the issue relates to its membership. This kind of settlement prevailed in the United Kingdom before 1868.<sup>92</sup>

When discussing election petition it is important to mention grounds for petitions. Every petition should be based on a certain ground or grounds. Phil Green and Louise Olivier suggest

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Thompson, op.cit., 161..

<sup>92</sup> Ibid.

several aspects of the election that may be questioned or become grounds of petition, including: the accuracy of the voter's list, whether voters were intimidated, bribed, or prevented from voting, whether electoral officers acted in a biased, partisan way, whether candidates or parties acted improperly, whether candidates were eligible to be elected, whether votes were fraudulently cast, or whether there were any errors or irregularities in the vote counting process.<sup>93</sup>

In the United Kingdom, a petitioner may allege (a) that a successful candidate was ineligible for membership of the Common, (b) that corrupt or illegal practices had been committed during the campaign, and (c) that there was an administrative irregularity during the election. If the petition is successful then the election may be declared void or another candidate may be deemed to have won.<sup>94</sup> We can find one case that represents the use of illegal practices as ground of petition in *Re Bedwelty Constituency Parliamentary Election, ex parte Finc.*<sup>95</sup> In this case relief from exceeding the expenditure limit was sought where carelessness led to the offence.

Third is a provision related to the effect of irregularities on the outcome of elections. This kind of provision must be established by law. In this respect, the emphasis is whether these countries have a legal framework that incorporate rules regarding the impact of irregularities towards the election result. Without such provision, criminal punishment for election offence offenders will have no impact on the election result. Therefore it is not sufficiently effective. The weakness of this sort of provision will also encourage some participants to mobilise votes through negative or illegal means, since the implication is not significant. It will not disqualify the seat that was obtained.

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<sup>93</sup> Phil Green and Louise Olivier. Loc. Cit.

<sup>94</sup> Thompson, op.cit., 162.

<sup>95</sup> [1965] 63 LGR 406 quoted in Thompson, ibid.

The third issue is closely related to the disqualifications which can lead to unseating of a person who obtained a majority of votes in an election. In the United Kingdom, one ground of disqualification is conviction of an election offence. This disqualification applies to people who have been convicted of certain electoral offences<sup>96</sup> or have been sentenced to a term of imprisonment of a year or more.<sup>97</sup> Where the winner at an election has such a sentence, the election is void.<sup>98</sup>

To conclude, it can be stated that the existence of provisions on election offences in the election laws of each country is very important, since the motive and opportunity to breach election laws remain as potential threats. Some participants of elections tend to take advantage of the absence of some provisions. This misconduct undermines the quality of democratic process, and creates a grievance for other participants and the public. The misconduct of the electoral process is also a breach of public trust and an illegal act. To counter the problem, different institutions and mechanisms may be responsible for enforcing election integrity as provided by legislation, and as specified by each country's legal framework.

The last standard, i.e. "compliance and enforcement of electoral law," has been discussed in depth. It is interesting to see whether this standard has been adopted and applied in elections held in certain countries. The next two chapters analyse whether the legal frameworks in Indonesia, Malaysia, Singapore and the Philippines have enumerated several election offences as mentioned by the international conventions and imposed them with criminal sanctions.

Moreover, analyses are also conducted on whether legal frameworks in Indonesia, Malaysia, Singapore and the Philippines have provided clear and fair mechanism for any aggrieved party who wish to challenge the decision of electoral body concerning election result.

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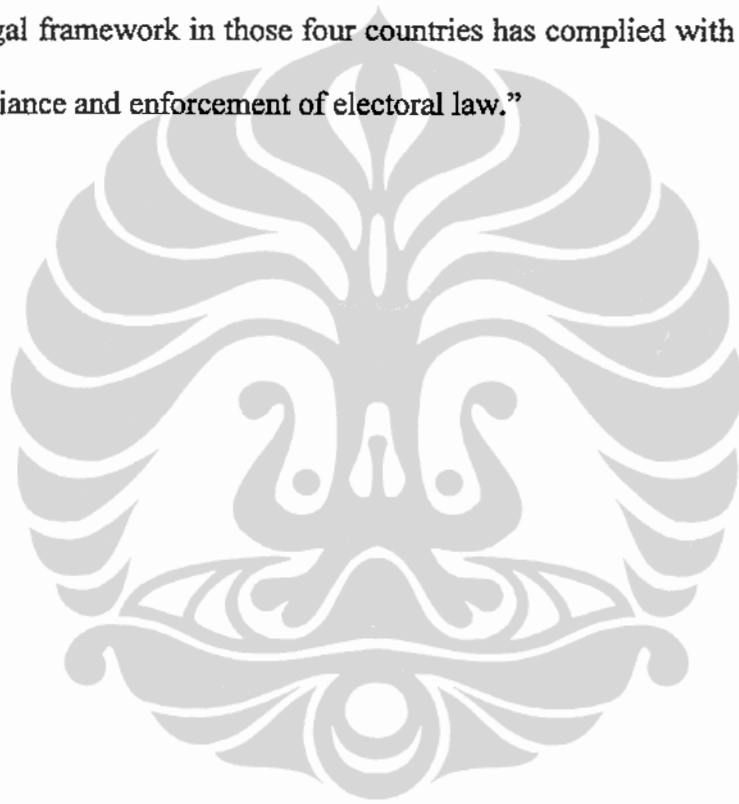
<sup>96</sup> *Representation of the People Act 1983*, sections 159, 160, 173 and 174.

<sup>97</sup> *Representation of the People Act 1983*, section 1.

<sup>98</sup> Thompson, *op.cit.*, 149.

The mechanism is highly significant since the final mission of all election participants is to be elected or to get a seat. If the mechanism is not provided or is relatively weak, it may cause the aggrieved party to be unable to challenge the election result.

Chapter three to six of this thesis address these three important aspects of elections. Chapter three analyses whether the legal framework of general elections in the four selected countries has complied with standard number one of the fifteen standards. Chapters four, five and six analyse whether the legal framework in those four countries has complied with standard number fifteen, namely “compliance and enforcement of electoral law.”





## CHAPTER 3

### THE LEGAL FRAMEWORK OF ELECTIONS

It is important to assess to what degree the country's legal framework for elections complies with international electoral standards. This will provide a set of constructive suggestions for corrections, improvements and possible best practices to strengthen the legislation.<sup>1</sup>

This chapter discusses the legal framework for the holding of general elections in Indonesia, Malaysia, Singapore and the Philippines. The term "legal framework of general elections" is generally referring to all laws and related legal materials and documents which are related to general elections. Specifically, "legal framework of general elections" includes constitutional provisions, election law, and all other laws having any impact over elections. Regulations issued by electoral management bodies are also included in this term.<sup>2</sup> As identified in chapter one and two, there are fifteen international standards of elections. In this chapter the focus is on the legal framework which is the first of the fifteen international standards. A discussion of this standard would also cover the electoral system and boundary delimitation as well as the electoral management bodies.<sup>3</sup> Before discussing the legal framework of elections, it will be necessary to describe the historical and political aspects of elections in the respective countries as a general background.

#### 3.1 Historical and Political Background

This sub-chapter provides a historical and political background concerning elections held in these four countries. This is an important introduction before the legal framework of elections is examined in detail in the next chapter.

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<sup>1</sup> International IDEA, *International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2002) at 8.

<sup>2</sup> *Id* at 11- 13.

<sup>3</sup> Discussion concerning "compliance and enforcement of electoral law" provided in chapters 4, 5, and 6.

### 3.1.1 Elections in Indonesia

Indonesia is a union comprising 33 provinces at present.<sup>4</sup> These provinces spread out from Aceh as the most western part of Indonesia to Papua at the most eastern. This country is the largest country in Southeast Asia as well as the largest Muslim populated country in the world. The islands stretch for 3,000 miles from east to west, spanning forty-six degrees of longitude. The total area of Indonesia is 5,070,606 sq km,<sup>5</sup> consisting of at least 17,000 islands. It is the largest archipelago state in the world. Indonesia is governed by a constitution drawn up in 1945 and undergirded by the *Pancasila*. The *Pancasila* consists of five fundamental principles of monotheism, humanity, national unity, consensual representative democracy, and social justice.<sup>6</sup>

In accordance to the division of power, the 1945 Constitution divides the state power into three different powers: executive, legislative, and judicial. The power takes the form of high institutions, namely the Presidency, the People Representative Council (DPR) and the Supreme Court (MA). In addition to these three, the 1945 Constitution also recognises other branches of power, namely the House of Regional Representative (*Dewan Perwakilan Daerah/DPD*) and the State Financial Audit Board (*Badan Pemeriksa Keuangan*). The other constitutional body is the People Consultative Assembly (MPR) which consists of DPR and DPD. Before the amendments to the 1945 Constitution, the MPR was the highest state institution.<sup>7</sup>

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<sup>4</sup> Indonesia Statistical Board, *Statistical Yearbook of Indonesia, 2007*. In relation to the demand of greater autonomy of local government, which is one of Indonesia's most popular issues in recent days, some new provinces will be declared in the near future. The East Timor province was separated from the country and become a new country. The new provinces are Irian Jaya Barat [West Irian Jaya], Gorontalo, Bangka Belitung, Banten, Maluku Utara [North Maluku], Sulawesi Barat [West Sulawesi].

<sup>5</sup> The Economist Intelligence Unit Limited 2001, *Country Profile 2001-Indonesia* (2001) at 3.

<sup>6</sup> The *Pancasila* is the state ideology of Indonesia.

<sup>7</sup> Since the Fourth Amendment of the 1945 Constitution, the role of MPR has changed greatly. The most important change is that the MPR has no role to elect the president. The president is to be elected directly by the people in a presidential election.

On the third amendment,<sup>8</sup> the 1945 Constitution sets out two very important institutions, the first is a division of judicial authority i.e. the Constitutional Court<sup>9</sup> (one of its tasks is settling disputes over general election results) and the second is the General Election Commission (KPU).<sup>10</sup>

Initially, there was only one category of elections, i.e. elections to elect DPR and DPRD<sup>11</sup> members. As of 2004, in accordance to amendments to the Constitution, general elections are conducted to elect members of DPR, Provincial DPRD, Regency/Municipality DPRD, members of DPD, and to elect President and Vice-President. In addition to such elections, there are also elections conducted to elect governors, regents, mayors, which are commonly called regional elections (*pemilihan kepala daerah* or widely known as *Pilkada*).<sup>12</sup>

Historically, since the proclamation of independence (on August 17<sup>th</sup>, 1945) Indonesia has held nine General Elections. The first General Elections took place in 1955, came up with the *Konstituante* (a state body with authority to build a new constitution of Indonesia) and DPR (parliament).<sup>13</sup> The 1955 elections, which were considered as the second largest event after the proclamation of independence in 1945,<sup>14</sup> took place during a liberal democracy period.<sup>15</sup>

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<sup>8</sup> The 1945 Constitution (UUD 1945) has been amended four times: first amendment (1999), second amendment (2000), third amendment (2001), and fourth amendment (2002).

<sup>9</sup> In Article 24C of the 1945 Constitution (resulted from third amendment), the idea of establishing a Constitutional Court has been adopted into the Constitution, as a special constitutional body having equal position to the Supreme Court.

<sup>10</sup> Article 22E of the 1945 Constitution. In this thesis, the term "Article" is used as translation for *Pasal* in Indonesian Constitution, meanwhile "section" is used as translation of "Pasal" in law or act or other legislation. See Echols, John M and Hassan Shadily, *Kamus Indonesia Inggris*, third edition, (Jakarta: PT Gramedia Jakarta, 2003) at 411. The *Kamus* translated "pasal" as "paragraph, section or article."

<sup>11</sup> People Representative Council in Provincial and Regency or Municipality.

<sup>12</sup> According to the new legislation *Law No. 22 of 2007*, the term General Elections cover regional head elections (*Pilkada*), accordingly KPU also hold highest responsibility regarding *Pilkada*.

<sup>13</sup> In the 1955 General Elections, besides electing members of DPR, they were also convened to elect members of *Konstituante* Board; however, such elections have never been convened again.

<sup>14</sup> Alfitra Salam, 'Pemilihan Umum dalam Perspektif Sejarah : Pengalaman 1955' [General Elections in Historical Perspective: 1955 Experience], in *Menggugat Pemilihan Umum Orde Baru* [Undermining New Order General Elections] (ed. Syamsuddin Haris), (Jakarta: Yayasan Obor Indonesia & PPW-LIPI, 1998) at 19.

<sup>15</sup> As has been expected, the results of the General Elections came up with four largest parties, namely *Partai Nasional Indonesia* (Indonesian Nationalist Party/ PNI), *Majelis Syuro Muslimin Indonesia* (Indonesian Modernist

In 1971, the first General Elections of the New Order period took place, which were also the second general elections since the independence of Indonesia. At that time, Golkar won. Ever since, general elections have taken place continually in the political scene of Indonesia with similar results to those of the 1971 to 1997 general elections, namely victory for the ruling party Golkar. In other words, the Soeharto's regime successfully managed to hold General Elections in 1971, 1977, 1982, 1987, 1992, and 1997, resulting in a victory for them.<sup>16</sup>

Such victories, however, were marred by fraudulent instances, such as government official frauds, bureaucratic coercions, monopoly of the press, unfair electoral management bodies, and corrupt judiciary officials that tend to protect the New Order interests.<sup>17</sup> Harold Crouch wrote that:

"Apart from the success in the General Elections, Golkar is basically a creation of the military ruler and cannot be separated from their identity. Golkar, which has no political party's basis and does not have root at all among the people, is a multiple federation mobilised by the army temporarily with the intention to weaken position of the political parties".<sup>18</sup>

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Muslim Party/ Masyumi), Nahdatul Ulama (The Awakening of Ulama Party/ NU), and *Partai Komunis Indonesia* (Indonesian Communist Party/PKI).

<sup>16</sup> The holding of New Order's General Elections certainly cannot be separated from the history of New Order itself that became the new regime after the collapse of Soekarno. The birth of New Order was considered to have occurred on 11<sup>th</sup> March, 1966, right after the collapse of the Old Order that used Guided Democracy. The period of the Old Order lasted from 5<sup>th</sup> July, 1959 until 11 March, 1966.

<sup>17</sup> Since 1971, the General Elections have become a routine five-year national agenda. Various rules and regulations have been prepared for the implementation of the General Elections regularly. However, it is important to note that from the legal aspect, the New Order General Elections have many problems, such as bad composition and position of MPR, DPR, and DPRD and unfair of electoral management bodies. Another remark was that the New Order General Elections, seemed to be an instrument to maintain the power, instead of a means to circulate power circulation. Muhammad AS Hikam, 'Pemilihan Umum dan Legitimasi Politik' [General Elections and Political Legitimacy] in *Menggugat Pemilihan Umum Orde Baru* [Undermining New Order General Elections] (Ed. Syamsuddin Haris), (Jakarta: Yayasan Obor Indonesia & PPW-LIPI, 1998) at 57.

<sup>18</sup> Crouch, Harold, *Militer dan Politik di Indonesia* [Military and Politics in Indonesia], (Jakarta: Pustaka Sinar Harapan, 1999) at 303. For the in-depth explanation regarding Golkar and Military and its role in the New Order General Elections see Leo Suryadinata, *Golkar dan Militer – Studi tentang Budaya Politik* [Golkar and Military – Study concerning Political Culture], (Jakarta: LP3ES, 1992).

During that time, Soeharto was repeatedly elected as president<sup>19</sup> until his government collapsed in 1998. Even though General Elections continued to take place, the quality of New Order General Elections has been appraised as poor, or even undemocratic. Mahfud MD called the situation an undemocratic political configuration.<sup>20</sup>

During the New Order General Elections, the polling and counting stages, as well as the subsequent stages, were often without monitoring by opposition political parties. Those were the stages where frauds most often occurred. The polling day which took place on a weekday (and not on a holiday), for example, is considered very unfavourable for PDI and PPP but to Golkar's advantage. Through its bureaucracy channel,<sup>21</sup> Golkar mobilised civil servants to vote for Golkar at their work places. This is to guarantee that the civil servants would actually vote for Golkar. Even though it is stipulated by law that general elections must be free and confidential, it seems that most of the civil servants were not willing to take a risk by voting for other parties besides Golkar.

In contrast, many domestic and foreign observers praised the 1999 and 2004 General Elections because they were very different from the New Order's General Elections. However, these elections, whose level of democratic measures can only be compared to that of the 1955 General Election, also faced many problems especially in terms of a weak legal framework and its implementation.

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<sup>19</sup> Before third amendment in 2002, the President is not to be elected directly by the people through general elections, but elected by the MPR. Some members of the MPR were elected in general elections (as the DPR member) and some are appointed by the President. During the New Order era, Soeharto always become single candidate in election by the MPR.

<sup>20</sup> Indonesia under the New Order displayed undemocratic political configuration. See Mahfud MD, *Perkembangan Politik Hukum – Studi Tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia* [Development of Legal Policy – Study Concerning Legal Product in Indonesia], (Dissertation PhD, Universitas Gadjahmada, 1993) at 410.

<sup>21</sup> The Golkar force has three major channels namely: A (Military/ABRI), B (Bureaucracy), and C (Golkar).

The 1999 General Elections were held within a new atmosphere that has never been experienced for over thirty years under Soeharto's regime.<sup>22</sup> Even though the political situation was still affected by New Order's power, the people could freely exercise their political rights in the elections. The General Election was not considered as a mere formality. The democratic arena was more competitive compared to the six previous General Elections.

The final results of the 1999 General Elections indicated that *Partai Demokrasi Indonesia Perjuangan* (Indonesian Democratic Party of Struggle/PDI-P) was actually the strongest. Golkar Party was surprisingly still strong enough to secure second place, although its votes showed a high decrease in comparison to its achievement during the New Order General Elections. In the third place was another old party, PPP followed by *Partai Kebangkitan Bangsa* (National Awakening Party/ PKB), *Partai Amanat Nasional* (National Mandate Party/ PAN), *Partai Bulan Bintang* (Crescent Star Party /PBB), and *Partai Keadilan* (Justice Party/PK).

The other democratic elections, the 2004 General Elections, were held during the period of President Megawati. In these elections, an important change happened. The people elected directly three types of institutions: (1) people representatives both at the central level (People Representatives Council) and at the regional level (Provincial and Regency/Municipality People Representative Council); (2) President and Vice-President; and (3) Representative Council of Regions. The DPR/DPRD and DPD General Elections<sup>23</sup> were held simultaneously on 5 April 2004. The Presidential Elections were held on July 5, 2004 (First Round) and on September 20, 2004 (Second Round).

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<sup>22</sup> The 1999 General Elections were the first competitive general elections after Soeharto's step down. Many elements were supporting the implementation of its competitive general elections, such as an electoral management body which has been changed and the freedom of the press. Kevin Evans, "Hasil Pemilihan Umum 2004" [the 2004 General Election Result] in *Analisis CSIS*, Vol. 33, No. 2, June 2004, 190-191.

<sup>23</sup> These General Elections were widely known as the Legislative General Elections.

The 2004 General Elections were participated by 24 political parties. These elections were marked by surprises concerning two political parties categorised as new comers, namely, the Democratic Party (*Partai Demokrat*/PD) and the Prosperous Justice Party (*Partai Keadilan Sejahtera*/PKS). The Prosperous Justice Party (PKS) experienced a vast increase in popular support. In the 1999 General Elections, PKS (with the name of PK) could only obtain seven seats in the DPR. In the 2004 General Elections it obtained 45 seats (or a 650 percent increase).

Meanwhile the Democratic Party obtained 57 seats<sup>24</sup> surpassing the National Awakening Party (52 seats) and the National Mandate Party (52 seats).<sup>25</sup> There was an abrupt decrease suffered by the ruling party – PDIP, despite being the second winning party, as its votes decreased fast from 34 percent in the 1999 General Elections to only 19 percent in the 2004 General Elections. The votes and seats acquired by Golkar Party (gaining 21 percent of votes) pushed down PDIP's position. However, the superiority of Golkar was not absolute. Previously, Golkar in the New Order's General Elections always obtain above 65 percent of the votes.<sup>26</sup>

Based on the above illustration, it may be concluded that the 2004 General Elections were considered as the second democratic general elections after the fall of Soeharto. In the final report of the European Union monitoring mission, it is stated that generally all of the general election processes were conducted in accordance with the provisions of democracy. According to this report, the 2004 General Elections are the second most democratic general elections in Indonesia since the end of the authoritarian regime in 1998/1999.<sup>27</sup>

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<sup>24</sup> As a result of Constitutional Court decision, *Partai Demokrat* (Democratic Party) seats were decreased by two, to 55 seats, since one seat was held to belong to *Partai Amanat Nasional* (National Mandate Party) and the other one belong to *Partai Pelopor* (Pioneer Party). *Berita Mahkamah Konstitusi* [Constitutional Court News], *Edisi Khusus* [Special Edition] 2004 at 39.

<sup>25</sup> As a result of Constitutional Court decision, the seat of this party was increased by one seat to 53 seats. *Berita Mahkamah Konstitusi* [Constitutional Court News], *id* at 39.

<sup>26</sup> The complete result of the 2004 General Elections and the distribution of seats by each political party can be seen in the Appendices.

<sup>27</sup> The 2004 Final Report of European Union General Election Monitoring Mission in Indonesia, (2004) at 7.

Similar to such assessment, Freedom House also states that in the 2004 General Elections, Indonesians can elect their legislators in free and reasonably fair elections.<sup>28</sup> Therefore, since independence, there have been three democratic general elections in this country: the 1955, 1999 and the 2004 General Elections.

The achievement of free and fair general elections in Indonesia (particularly the 1999 and 2004 General Elections) is not the end goal. The democratic achievement should be connected with a higher standard of living for the people. As pointed out by Robert Dahl, the experience in the 19<sup>th</sup> and 20<sup>th</sup> centuries demonstrates that democratic countries are prosperous and non democratic countries are generally poor. Dahl relates this matter to the support of democracy for people's education, an independent judiciary, and communication, all of which are useful to economic growth. Up till now, Indonesian economic growth is still low compared to that in the previous regime. During Soeharto's era, Indonesia was considered as one of Asia's emerging economic powers.

The political parties competing in democratic general elections as such need to convince the people that democracy results in greater access to education and higher standards of education, independent judiciary, and communication which are useful to economic growth.

To the Malaysian political development, however is quite different. In Malaysia, the challenge is not the economic situation but limited freedom of the press and speech. It is also the imposing a frightening legislation called the *Internal Security Act 1960* (ISA), which allows for detention without trial.<sup>29</sup>

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<sup>28</sup> <http://www.freedomhouse.org/reports/century.pdf> cited on September 10, 2005. According to Freedom House for 2005 Indonesia is considered as a "Free" nation (based on two criteria: political rights and civil liberties. This status is the highest achievement. From 1973 – 2004 Indonesia was considered as a "Partly Free" nation. <http://www.freedomhouse.org/template.cfm> cited on April 1, 2008.

<sup>29</sup> Abdul Rashid Moten (Ed), *Government and Politics in Malaysia*, (Singapore: Cengage Learning Pte, 2008) at 14.



### 3.1.2 Elections in Malaysia

After being colonised by four major foreign powers – the Portuguese (1511-1641), Dutch (1641-1786), British (1786-1941 & 1941-1957), and a short occupation by the Japanese (before it reverted to the British), Malaya became an independent nation on 31 August 1957.<sup>30</sup>

When the federation achieved independence in 1957 it comprised eleven peninsular states; namely the two formerly Straits Settlements of Malacca and Penang and the nine Malay states of Perlis, Kedah, Kelantan, Terengganu, Pahang, Perak, Selangor, Negeri Sembilan and Johore. By 1961, talks to create a larger federation were held. Not long after that, a commission chaired by Lord Cobbold was appointed to ascertain the views of peoples in Sabah (North Borneo then) and Sarawak. Meanwhile, in Singapore a referendum was held to ascertain the people's view about the proposal to join the Malaysian federation. The proposal came into being in September 1963. However, Singapore had to be separated from Malaya in 1965.<sup>31</sup>

The Modern Malay states consist of two administrative and geographic areas. The Malaysian Peninsula which is also known as Malaya or more accurately West Malaysia, which consists of 11 states (Johor, Kedah, Kelantan, Malacca, Penang, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu) is located on the tip of Southeast Asian land with Singapore by its southern side. The territory of Selangor excludes the Federal Territory of Kuala Lumpur<sup>32</sup> and the Federal Territory of Putrajaya.<sup>33</sup> The territories of the state on other administrative areas are Sabah and Sarawak which are located at the opposite side of the South

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<sup>30</sup> The struggle towards independence for the Malay states had actually begun during the second half of the British colonisation. The process was expedited after the Japanese Occupation and the communist insurrection of 1948. The struggle for independence of the Malay states had actually been achieved without much confrontation with the British authority. It could be said to have been achieved through consultation. Jayum A Jawan, *Malaysian Politics & Government*, (Shah Alam: Karisma Publication, 2004) at 6-45.

<sup>31</sup> Abdul Aziz Bari, *op.cit.*, 28-29.

<sup>32</sup> Established under the Constitution (Amendment) (No. 2) Act 1973 [Act A206]

<sup>33</sup> Established under the Constitution (Amendment) Act 2000 [Act A1095]

China Sea, that is, the Borneo Island. The territory of the State of Sabah excludes the Federal Territory of Labuan.<sup>34</sup>

Malaysia is a constitutional monarchy, nominally headed by the *Yang di-Pertuan Agong* (the King).<sup>35</sup> In Malaysia's form of government, the *Yang di-Pertuan Agong* is the Head of State.<sup>36</sup> This means that the King rules according to the ground rules set forth by the constitution of the Federation. Therefore, the highest authority in this country is held by *Yang Di-Pertuan Agong* as a constitutional monarch<sup>37</sup> but in practice, the Prime Minister has a greater authority compared to that of the King.<sup>38</sup>

The position of the *Yang di-Pertuan Agong* came into being when the Federation of Malaya gained its independence in 1957. The *Yang di-Pertuan Agong* was elected to replace the British Monarch as the Head of State of the newly independent Federation of Malaya. In the post-independence period, this position is provided for by Article 32 of the Federation Constitution.<sup>39</sup>

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<sup>34</sup> Established under the Constitution (Amendment) (No. 2) Act 1984 [Act A585]

<sup>35</sup> Abdul Rashid Moten, op.cit., 7.

<sup>36</sup> The Federation's King (*Yang di-Pertuan Agong*) is elected for a term of five years by, and rotated among, the hereditary royal rulers of nine of the 11 states in Peninsular Malaysia. The other four states without royal rulers are each headed by a head of state (*Yang di-Pertuan Negeri*) appointed for four years by the *Yang di-Pertuan Agong* after consulting the chief minister of the state. The rulers and the state heads comprise the Conference of Rulers. Hai, Lim Hong, "Electoral Politics in Malaysia: 'managing' Elections in a Plural Society," in *Electoral Politics in Southeast & East Asia*, (Eds) Aurel Croissant, Gabriele Bruns and Marei John, (Singapore: Friedrich Ebert Stiftung, 2002) at 101-102.

<sup>37</sup> In 1983 the government sought to define the powers of the *Agong* more explicitly. Parliament enacted legislation removing the necessity of the *Agong*'s signature for an act to become law, and extending full power to the Prime Minister to declare a state of emergency (rather than the *Agong* acting on the Prime Minister's advice). Further constitutional changes in 1993 removed the *Agong*'s and *Sultans*' immunity from prosecution, through a special constituted court, and reduced their power to bestow royal pardons except on advice. Fuston, John, *Government and Politics in Southeast Asia*. (Singapore: Institute of Southeast Asian Studies, 2001) at 172-173.

<sup>38</sup> Lukman Thaib, *The Politics and Governments of South East Asia*, (Kuala Lumpur: Golden Books Center SDN.BHD, 1997) at 182. Since its independence, Malaysia has had five Prime Ministers. They are Tunjku Abdul Rahman Putra Al-Haj (1957-1970), Tun Abdul Razak (1970-1976), Datuk Hussein Onn (1976-1981) and Tun Dr. Mahathir Mohammad (from 1981 up to 2004) and the current one is Dato Seri Abdullah Ahmad Badawi (2004 - present).

<sup>39</sup> The Article also provided for the elections of a Deputy Head of State (*Timbalan Yang di-Pertuan Agong*). Jayum A Jawan, op.cit., 67.

As a political system, Malaysia is a parliamentary democracy with a constitution based on the British constitutional system, namely the Westminster style of parliamentary democracy.<sup>40</sup> Malaysia has a bicameral legislature, consisting of two houses. There is the Upper House, known as the Senate (*Dewan Negara*),<sup>41</sup> and then there is the Lower House that is also known as the House of Representatives (*Dewan Rakyat*).<sup>42</sup> Theoretically, they may be approximated to the House of Lords and the House of Commons in England, respectively.<sup>43</sup>

The House of Representatives (*Dewan Rakyat*) is composed of members elected directly on the basis of universal adult suffrage using plurality electoral system. The *Dewan Rakyat* members increased from 219 in 2004 Parliamentary elections to 222 in 2008 Elections.<sup>44</sup> As of 2008, the composition of the *Dewan Negara* (Senate) is 70 members.<sup>45</sup> The *Dewan Rakyat* is by far the most important. It is a place where the Prime Minister and most of the cabinet members are appointed. It can initiate all bills. It also has exclusive power over finance.<sup>46</sup> The King or the

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<sup>40</sup> Following the Westminster parliament tradition, parliament was meant to have a monopoly on legislation, control of the purse strings, and ability to call the executive to account. Funston, op.cit., 179.

<sup>41</sup> The *Dewan Negara* is intended to act as a house of review, and to protect the states' interests. In 1957, the majority of senators were elected by state assemblies, but constitutional change in 1963 left state appointees as a minority, effectively removing state representational role. Fuston, id at 180.

<sup>42</sup> The *Dewan Rakyat* is where the power of the legislature truly resides. The *Dewan Rakyat* is a fully elected house. Each member is elected from a parliamentary constituency distributed over the thirteen states.

<sup>43</sup> Tan, Kevin YL and Thio Li-An, *Constitutional Law in Malaysia and Singapore*, (Singapore: Butterworths Asia, 1997) at 245.

<sup>44</sup> <http://pru12.spr.gov.my/spr/index.php> .

<sup>45</sup> The membership of the Senate is made up of two categories: 26 members elected by the State Legislative Assembly to represent 13 states (each state represented by two members). 44 members appointed by His Majesty the Yang Di-Pertuan Agong on the advice of the Prime Minister, including two members from the Federal Territory of Kuala Lumpur, and one member each from the Federal Territory of Labuan and Putra Jaya. The rest are to be appointed to represent various sections of the Malaysian society such as the business community, profession, persons who have given distinguished public services and minorities. The present members of *Dewan Negara* are 68, two seats are not filled. <http://www.parlimen.gov.my> cited in 10 October, 2008. See also Abdul Rashid Moten, op.cit. 106. See Tan, Poh Ling, *Asian Legal Systems – Law, Society and Pluralism*, (Sydney: Butterworths, 1997) at 271-273.

<sup>46</sup> Fuston, loc.cit.

*Yang di-Pertuan Agong* is part of the Parliament.<sup>47</sup> Nevertheless, His Majesty does not take part in its proceeding except to declare open or to close each sitting or session of parliament.<sup>48</sup>

Each of the 13 states in the federation has a unicameral State Legislative Assembly (*Dewan Undangan Negeri/ DUN*) while the federal parliament has two houses, namely the Senate (*Dewan Negara*) and the House of Representatives (*Dewan Rakyat*). Only the latter is directly elected and is hereafter referred to when the term 'parliament' is used in an electoral context. The parliament or a state legislature has a term of five years. Elections are thus held for parliament and the state legislature at intervals not exceeding five years.<sup>49</sup>

The system of government at state level in many ways mirrors that of the national. The state government leaders are known as Chief Ministers (*Menteri Besar* in the sultanates, and *Ketua Menteri* in Penang, Malacca, Sabah and Sarawak).<sup>50</sup> The legislative assembly, composed of elected members, legislates in conformity with Malaysian and state constitutions.<sup>51</sup>

In this country, Parliament is the highest law-making authority. Nevertheless, its power to make or amend law is subjected to the Constitution of the Federation. Among the main functions of Parliament are to make, amend or repeal law, to impose or increase taxes, or to reduce or remit any existing taxes, and to pass national budget for any physical year.<sup>52</sup>

In Malaysia, elections are held regularly and many parties are allowed to compete. However there has never been a change of Federal Government. The ruling *Barisan Nasional* coalition (BN), formerly called the Alliance, has always maintained control of the Federal

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<sup>47</sup> Article 44 of the Federal Constitution states that the legislative authority of the Federation shall be vested in a Parliament, which shall consist of the *Yang di-Pertuan Agong* and two *Majlis* (Houses of Parliament) to be known as the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives).

<sup>48</sup> Jayum A Jawan, op.cit., 109.

<sup>49</sup> Hai, op.cit., 102.

<sup>50</sup> Fuston, op.cit., 171.

<sup>51</sup> Abdul Rashid Moten, op.cit., 10.

<sup>52</sup> Jayum A. Jawan. op.cit., 110-111. See also Lukman Thaib, op.cit., 152.

Government and held at least a two-thirds majority in the House, with the exception of a brief period in 1969<sup>53</sup> and 2008.

The first general elections were held under the support of the British in 1955, two years before Malaya's independence in 1957 (before the formation of Malaysia in 1963).<sup>54</sup> After independence, general elections were held consecutively without any exception once every five years as stipulated by the constitution. Even though on one occasion, voting was postponed in the eastern states of Malaysia in response to racial riots post General Elections in West Malaysia in 1969.<sup>55</sup>

Elections at the federal level were held in 1959, 1967, 1969, 1974, 1978, 1982, 1986, 1990 and 1995, and then in 1999, 2004 and 2008. The elections at state level have been held in line with the elections of the federal level for 11 states in Malaysia Peninsula while elections in the states of Sabah and Sarawak which are usually held for more than one day have been held different times since 1969.<sup>56</sup>

At the national level, the governing national coalition is not only maintaining its position after each of the elections - except for a brief period between the holding of elections in 1969 in West Malaysia and the postponement of voting in East Malaysia<sup>57</sup> and after the 2008 General Elections - the Federal Government also had two thirds of the majority in parliament. During 1970 and 1980, the government acquired more than 80 percent of the seats.<sup>58</sup> This success has been experienced by most states, even though losing partly in Kelantan and Sabah and once for

<sup>53</sup> Thornton, Laura, "Malaysia" in *Political Parties in Asia Promoting Reform and Combating Corruption in Eight Countries*, (Eds. Manikas, Peter M and Laura L. Thornton), (Washington: National Democratic Institute for International Affairs, 2003) at 139-182.

<sup>54</sup> Crouch, Harold, "Malaysia: Do elections make a difference?" in *The Politics of Elections in Southeast Asia* (Ed. Taylor, R.H), (Cambridge: Woodrow Wilson Center Press and Cambridge University Press, 1996) at 114.

<sup>55</sup> Ibid.

<sup>56</sup> In 1969, elections in Sabah and Sarawak were postponed after the results in the Malaysia Peninsula were obtained. *ibid.*

<sup>57</sup> Crouch, *loc.cit.*

<sup>58</sup> *Ibid.*

each of Terengganu and Penang.<sup>59</sup> At the 2008 elections, opposition parties successfully become the government in five states (Penang, Kelantan, Kedah, Selangor, and Perak).<sup>60</sup>

The present ruling coalition, *Barisan Nasional*<sup>61</sup> consists of 14 political parties led by the United Malays National Organisation (UMNO) which is also chaired by Dato Seri Abdullah Ahmad Badawi.<sup>62</sup> UMNO has been at the forefront of Malaysian politics and has been the largest political party in Malaysia since 1946. UMNO was established to unite the Malay people and to represent the interests of the majority ethnic group. Presently, this party has 2.7 million members and holds two thirds majority voters in the peninsula except in the 1969 and 2008 General Elections. It is still largely confined to the Peninsula, but spread its wing to Sabah in 1999; however it has yet to have any representative in Sarawak.<sup>63</sup>

The major opposition parties in Malaysia are the Islamic Party of Malaysia (PAS), Democratic Action Party (DAP)<sup>64</sup> and the People's Justice Party (PKR).<sup>65</sup> Even though PAS lost Terengganu some years ago, PAS has acquired control of Kelantan except for the period of 1977 and 1990 and re-dominate Terengganu in 1999 but lost the state again in 2008. This party obtained strong support from the Malay ethnic group in the southern part of this country, along with Kedah and Perlis. It gained control of the State Government of Kedah in 2008. In its political program, this party emphasises the interests of Islam and Malay ethnicity and constantly acquires votes from 30 percent up to 50 percent of Malay ethnic votes in the Peninsula. In 1973, this party changed its name into Islamic Party of All Malaysia (*Parti Islam Se-Malaysia*). The 1999 General Elections were its most successful General Elections. It was due to reforms which

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<sup>59</sup> Ibid.

<sup>60</sup> <http://pru12.spr.gov.my/spr/index.php> cited on 20 April, 2008.

<sup>61</sup> The coalition was established in 1974

<sup>62</sup> Previously, Dr. Mahatir Mohamad was the Chairman of UMNO and also the Prime Minister of Malaysia.

<sup>63</sup> Fuston, *op.cit.*, 185.

<sup>64</sup> Lukman Thaib, *op.cit.*, 153.

<sup>65</sup> Abdul Rashid Moten, *op.cit.*, 15.

resulted in it obtaining 27 seats, twice of its best performance, and its leader become the new opposition leader in Parliament.<sup>66</sup>

The Democratic Action Party (DAP) was established in 1966 as the replacement of the People Action's Party (PAP) Singapore, one year after its withdrawal from Malaysia. DAP supported the non-communal approach towards Malaysian politics. However due to the absence of support from the Malay ethnic group, it directly appealed to non-Malay ethnic groups. In its first year, the party focused on Chinese culture, language and education. This has attracted the support from the Chinese in the Peninsula. The following years, the image of the party became moderate but it only achieved a small triumph in the 1999 General Elections.<sup>67</sup> Another party is the socialist party with the domination of Malays, namely the Malaysian People Party (*Parti Rakyat Malaysia/ PRM*).<sup>68</sup>

People's Justice Party or PKR (previously National Justice Party) is a multi-ethnic party formed in 1999 by activists in the *reformasi* movement. Wan Azizah Ismail, the wife of former Deputy Prime Minister Anwar Ibrahim, is the president of the party, and Anwar's friends, supporters, and sympathizers joined KEADILAN as its leadership. Several of the party's leaders are new to politics and have backgrounds in civil society organizations and academia. In 1999, four parties, i.e., PAS, DAP, KEADILAN and PRM, established an Alternative Front (*Barisan Alternatif/ BA*) and contested elections and it has becomes permanent ever since. BA probably will help establish a two-coalition system in Malaysia.<sup>69</sup> It is important to note that in August

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<sup>66</sup> Id at 186-187. In 2008 Elections, this party won 23 seats.

<sup>67</sup> Id at 187.

<sup>68</sup> Ibid.

<sup>69</sup> Id at 185-188.

2003, PRM merged with KEADILAN and gave birth to *Parti Keadilan Rakyat* (People's Justice Party or PKR).<sup>70</sup>

In October 2003, Deputy Prime Minister Abdullah Badawi took over the post of Prime Minister from Dr. Mahathir Mohamad who made good on a pledge to leave office. Abdullah Badawi, faced the challenge in 2003 of shoring up support for the ruling coalition in elections that were expected in the first half of 2004. As Deputy Prime Minister, the largely untested Badawi was elevated to the top post in October after Dr. Mahathir decided to step down as the nation's leader after more than two decades in office. Recently, Badawi is faced with serious criticisms from his senior, Dr. Mahathir, due to a dramatic decrease of BN seats in Parliament and State Assemblies as a result of the 2008 General Elections.

In the last parliamentary elections commenced on March 2008, the ruling coalition, *Barisan Nasional*, has failed to obtain a 2/3 majority of seats in Parliament. The coalition won only 140 seats out of 222 total seats (63.1%) in Parliament. The opposition parties successfully obtained 82 seats (36.9%). Even though the parliamentary elections were won by BN (as happened in previous elections), but it yielded one of the worst results in the coalition's history. It also marked the first time since the 1969 Elections that the coalition did not win a two-thirds majority in Parliament. In addition, five of the 13 state legislatures were won by the opposition, compared with only one in the last.<sup>71</sup>

As a comparison, in the 2004 Elections, BN won 199 seats out of 219, while the opposition won only 20 seats. It means that the opposition parties's seats increased 400 percent. The leading opposition party, *Parti Keadilan Rakyat* (PKR) has increased from one seat to 31 seats. PAS obtained 23 seats, and DAP won 28 seats.

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<sup>70</sup> Id at 151.

<sup>71</sup> <http://pru12.spr.gov.my/spr/index.php>. See also <http://thestar.com.my/election/results/results.html>. cited on 10 March, 2008. See also Kompas, 10 March, 2008.



The Malaysian political system has been variously characterised as “quasi-democratic,” “semi-democratic” and “competitive authoritarianism.”<sup>72</sup> With regards to political rights, from 1972-2006 Malaysia had also been categorised as a “partly free” country by Freedom House. Meanwhile, other Asian countries such as Indonesia, has changed from “partly free” to “free” country in 2006.

The last parliamentary elections held in 2008, will probably change the perception about political conditions in Malaysia. The legal framework of elections as applied in Malaysia makes it possible for the holding of competitive elections. This is supported by Harold Crouch’s opinion that “the constitutional framework of the Malaysian political system is essentially democratic.”<sup>73</sup>

### 3.1.3 Elections in Singapore

Singapore is a country in Southeast Asia located at the southern tip of the Malay Peninsula. This country is sandwiched between Malaysia and Indonesia. The location of this island is 137 kilometres north of the Equator. Singapore is a city-state, which consists of several big and small islands. The total width of Singapore Island is 682.7 km<sup>2</sup> with length of 42 kilometres measured from the eastern area to the western area and 23 kilometres measured from the north area to the south. Among its surrounding islands, the biggest island is Tekong Island about 2368.7 hectares, Ubin Island about 1131.4 hectares and Sentosa Island about 494.5 hectares.<sup>74</sup>

In 1819, Singapore was chosen as a settlement by the British East India Company because it was situated at the cross-roads for trade. Singapore achieved self government – but not

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<sup>72</sup> Abdul Rashid Moten, *op.cit.*, 13.

<sup>73</sup> Harold Crouch, *Government and Society in Malaysia*, (St. Leonard’s, NSW: Allen and Unwin, 1996) at 5.

<sup>74</sup> Ministry of Information, Communications and the Arts, *Singapore 2002* (2002) at 37.

control over its foreign policy – in 1959. In 1961, Tunku Abdul Rahman, the Prime Minister of Malaya, while visiting Singapore proposed that Malaya, Singapore, Sarawak and Sabah should join to form a new nation, Malaysia. There would be economic gains through trade and investment, as well as security benefits to help fight communist subversion. Malaysia was formed in 1963, but was followed by separation of Singapore in 1965.<sup>75</sup>

Today, Singapore has been transformed into an advanced developing country, with an affluent and competitive economy. According to the World Development Report 1998/1999, this country was the fourth richest country in the world in 1997, after Switzerland, Japan and Norway.<sup>76</sup>

Singapore is a republic with a parliamentary system. Parliamentary democracy in this country is a legacy of British colonial rule.<sup>77</sup> The written constitution has state organs, which consist of executive, judicial and legislative institutions. A President is the head of state with a Prime Minister as the leader of the government who handles state administration. The President appoints the Prime Minister and other members of the Cabinet from Members of Parliament (MPs).<sup>78</sup>

The cabinet in Singapore is led by the Prime Minister appointed from the Members of Parliament. Meanwhile, the ministers are appointed by the President based on the advice of the Prime Minister. This Cabinet is responsible for the policies issued by the government and for

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<sup>75</sup> One of the main attractions for Singapore in joining the new nation was the prospect of broadening Singapore's range of exports to Malaya. However, this was not encouraged by the Malaysian government, and combined with other sources of disagreement, resulted in Singapore being forced to leave Malaysia in 1965, and become fully independent. Mauzy, Diane K and R.S Milne, *Singapore Politics under the People's Action Party*, (London: Routledge, 2002) at 2-3.

<sup>76</sup> Quah, Jon ST, "Singapore Meritocratic City-State", in *Government and Politics in Southeast Asia (Ed) John Fuston*, (Singapore: Institute of Southeast Asian Studies, 2001) at 292.

<sup>77</sup> Chee, Chan Heng, "Legislature and Legislators," in *Government and Politics of Singapore*, (Eds) Jon S.T Quah, Chan Heng Chee, and Seah Chee Meow, (Oxford: Oxford University Press, 1985) at 72.

<sup>78</sup> Ministry of Information, Communication and the Arts, op.cit., 63.

daily government administration. The ministers are accountable to Parliament and to the Prime Minister.<sup>79</sup>

Singapore state law consists of the Constitution, acts made by Parliament, subsidiary legislation and common law. The Constitution – which is the supreme law of the country- lays down the structure and organisation of the three organs of state: the executive, the legislature and the judiciary. The Constitution was originally contained in three basic documents: the Constitution of Singapore (originally the Constitution of the State of Singapore when it was a constituent state in Malaysia); the Republic of Singapore Independence Act, 1965; and the Federal Constitution of Malaysia (part of which was applicable to Singapore).<sup>80</sup>

Although Singapore's legal system is derived mostly from the British legal system, there are also other legal sources that affect it. For example, the Singapore *Penal Code*, *Evidence Act* and *Criminal Procedure Code* were copied from India. However, India was then under British Rule. The Singapore corporate law is also more similar to the Australian legal model as compared to the British legal model.<sup>81</sup>

In January 2001, the Singapore Constitution has mandated that Singapore citizens have right to elect their President. The President is elected for a period of six years and has the right to participate with the government to prepare the budget and to determine the public policies and evaluate government activities through the *Domestic Security Law* and the *Religious Harmony Regulation* and to participate in investigating corruption cases.<sup>82</sup>

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<sup>79</sup> Ibid.

<sup>80</sup> On 31 March 1980, a reprint of the Constitution of the Republic of Singapore was published. By incorporating provisions in the Malaysian Constitution which continue to apply to Singapore after its separation from Malaysia. *Id* at 92-93.

<sup>81</sup> Ibid. See also Myint Soe, *The General Principle of Singapore Law*, (Singapore: The Institute of Banking and Finance, 1978).

<sup>82</sup> Ibid.

Several political parties have been established in Singapore, including the People's Action Party (PAP) which was established in 1954. And later, the Worker's Party (WP) was established in 1957 by the late David Marshall. Another party is the Singapore Democratic Party (*Parti Demokratik Singapore* or SDP) which was established by Chiam See Tong in September 1980. Furthermore, there is Singapore Malay National Organization (*Pertubohan Kebangsaan Melayu Singapore*) which is a party deriving from UMNO. Another party is the United National Front (UNF) established to unite Singapore and Malaysia. In addition, there are the People's Front (PF),<sup>83</sup> the Socialist Front (*Barisan Sosialis/BS*), the Singapore United Front (SUF), the National Solidarity Party (NSP), the Singapore Justice Party (SJP) and the Singapore Islamic Force (*Angkatan Islam Singapore/AIS*).<sup>84</sup>

From March 1948 to 2001, Singapore had held 14 General Elections and 16 by-elections. Such General Elections were held twice to elect the legislative institution, three times to elect legislative assembly and nine times to elect Parliament.<sup>85</sup> In the 1955 Elections, SLF acquired 10 seats, SPP won four seats, PAP won three seats, the Alliance Party had three seats, the Democratic Party won one seat and independent persons three seats. While on May 1959 Elections, PAP won 43 of 53 seats, SPA won four seats, the Alliance won three seats and one seat by an independent candidate. The 1963 General Elections were crucial general election for PAP since this party only acquired 37 seats of 51 competed seats although it only obtained 41 percent of the votes. The Socialist Front (*Barisan Sosialis*), despite being hampered by all forms

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<sup>83</sup> This party established in March 25, 1971.

<sup>84</sup> Lukman Thaib, op.cit., 209-210.

<sup>85</sup> "Past Elections," <<http://www.elections.gov.sg>>, 20 September 2005. The last General Elections in Singapore were in 2006.

of repressive measures, including the detention of its key parliamentary and trade union leaders, still managed to win thirteen seats and 33 percent of popular votes.<sup>86</sup>

The party system in Singapore has undergone changes from a competitive system, applied in the May 1959-September 1966 General Elections, into one party *de facto* system in the October 1966 General Elections, when 13 Members of Parliament from the National Front boycotted Parliament. It changed into a *de jure* party system after the 1968 General Elections, when PAP won all the 58 seats in Parliament. This victory of PAP was repeated in the 1972, 1976 and 1980 General Elections. However, PAP monopoly in the Parliament changed when J.B. Jeyaretnam from the Worker's Party beat PAP candidate, Pang Kim Hin, through the Anson by-elections.<sup>87</sup>

Based on the Registry of Societies, there were 36 political parties listed in Singapore.<sup>88</sup> However, not all of them were active in the elections. Only six political parties participated in the 1997, 1999 and 2001 General Elections. The number of opposition MPs has increased from 8 to 14 during the 1959 – 1963 General Elections, in the competitive system. For 15 years, there was not any Parliamentary opposition in Singapore (from October 1966 to October 1981) and the number of opposition MPs has fluctuated between one and four since the 1984 General Elections.<sup>89</sup>

The last parliamentary general elections in Singapore were held on May 6, 2006. In these elections, 1.22 million out of 2.16 million eligible Singaporeans voted for Members of Parliament and elected their next government. The People's Action Party (PAP) won 66.6 % of

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<sup>86</sup> Lukman Thaib, *op.cit.*, 210-212.

<sup>87</sup> Quah, *op.cit.*, 301-302.

<sup>88</sup> "Political Parties in Singapore," [www.singapore-elections.com](http://www.singapore-elections.com), 17 September 2005.

<sup>89</sup> Quah, *loc.cit.*

the overall votes and gained 82 out of 84 seats. The PAP returned for a twelfth consecutive term in office under Prime Minister Lee Hsien Loong.<sup>90</sup>

After providing the short historical and political background, the examination is on how Singapore is perceived from an outside perspective. A Singapore country report by the United States of America's Department of State concerning Human Rights Practices for 1998 notes that in Singapore "the Constitution provides citizens with the right to change their government peacefully through democratic means, opposition parties are free to contest elections, and the voting and vote-counting system are fair, accurate, and free from tampering."<sup>91</sup>

However, Singapore has never been fully accepted as a democratic country by western liberal standards. It is often described as a model of 'soft authoritarianism,' or a limited democracy at best.<sup>92</sup> It is unlikely that Singapore will see a dramatic transformation from a limited democracy to a model based on Western liberal democracy in the near future. Yet, the Government has begun to take steps to expand political space.<sup>93</sup>

According to Freedom House, Singapore is still regarded as a "partly free" country in terms of political rights. This category has never changed since 1973. Freedom House notes that "citizens of Singapore cannot democratically change their government."<sup>94</sup> This is in line with the opposition perspective who feels that there are no democratic elections in Singapore. The Singapore Democratic Party for instance, has pointed out that "In the absence of genuinely free and fair elections, the act of voting becomes a treacherous impostor of democracy."<sup>95</sup>

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<sup>90</sup> [http://en.wikipedia.org/wiki/Singapore\\_general\\_election,\\_2006](http://en.wikipedia.org/wiki/Singapore_general_election,_2006)

<sup>91</sup> Hwee, Yeo Lay, "Electoral Politics in Singapore" in *Electoral Politics in Southeast & East Asia*, (Eds) Aurel Croissant, Gabriele Bruns and Marei, (Singapore: Friedrich Ebert Stiftung, 2002) at 222-223.

<sup>92</sup> Id at 203.

<sup>93</sup> Id at 223.

<sup>94</sup> Freedom House, *Annual Report 2004*.

<sup>95</sup> "The Truth About The Election System," <http://www.singaporedemocrat.org/index.html>

In this regard, Jeremy Grace has a different view with a statement that Singapore's elections are "fair, accurate, and free from tampering."<sup>96</sup> According to Grace, "the development of a robust opposition has been hampered by limits on basic freedoms associated with democratic practices and by the Government's control and use of the electoral process as an instrument for political dominance."<sup>97</sup>

### 3.1.4 Elections in the Philippines

The Philippines has an area of 300,176 sq km, with the capital city of Manila. The official language used is *Tagalog* and English. This country is an archipelago, which consists of about 7,100 big and small islands bordered at the east by the Pacific Ocean, at the south by the Sulawesi Sea, at the northwest by the South China Sea, and at the north by the Luzon Strait. Those islands are usually classified into four groups, i.e., Luzon Island, Visayan Islands, Mindanao Islands, Palawan Islands and Sulu Island. At the eastern side of this country lies the Mindanao Channel (the Philippine Channel) which is one of the deepest sea channels in the world (11,500 meters). The Philippine archipelago is part of a young mountain range in the Circum Pacific. Therefore this country is categorised as an earthquake sensitive volcanic country.<sup>98</sup>

The population of the Philippines totalled 76,348,000 persons in the year 2000, spreading out unevenly in the country. The densely populated area is the Ilocos Beach, the middle part of Luzon Island, Cebu Island, Negros Island and Panay Island. The east coast of Luzon Island, the southern part and the hinterland of Mindanao Island, Palawan Island, and the western part of the

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<sup>96</sup> Grace, Jeremy, "Drawing Districts to Ensure Super-Majorities in the Parliament," The Delimitation Equity Project, USAID. <http://aceproject.org/ace-en/topics/bd/bdy> cited on 1 January, 2008

<sup>97</sup> Ibid.

<sup>98</sup> Gonzales III, Joaquin L, "Philippines Continuing People Power," in *Government and Politics in Southeast Asia* (ed. John Funston), (Singapore: Institute of Southeast Asian Studies, 2001) at 256-261.

Mindoro Island are scarcely populated. The Philippines is the only country in Asia whose majority of population embrace Christianity, 84 percent of them being Roman Catholics. The Islamic adherents are approximately four percent, concentrated in South Mindanao and Sulu Island. The Islamic adherents are known as the Moro people.<sup>99</sup>

The Philippines has a long history of democratic constitutional developments. The initial effort to establish the Philippine political institution basis was prepared during the revolution period when the Republic of the Philippines was first established on June 12, 1898. The *Malolos* Constitution of 1898-1899 reflected the aspirations of educated Filipinos to create a polity as enlightened as any in the world.<sup>100</sup> This *Malolos* Constitution instituted liberal democracy, representation in government, and doctrine of separation of powers and checks and balances among the organs of government.<sup>101</sup> Democratic institutions were introduced to the Philippines by the United States of America at the beginning of the twentieth century. The apparent success of these imported practices gave the Philippines its reputation as "the showcase of democracy in Asia."

The 1935 Constitution, drawn up under the terms of the Tydings-McDuffie Act, which created the Philippine Commonwealth, also served as a basis for an independent Philippines government from 1946 until 1973. The United States of America brought the concept of liberal democracy and was allowing the establishment of political institutions, such as the electoral system, party system, legislative institution and independent judiciary. The tradition of political

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<sup>99</sup> Ibid.

<sup>100</sup> This first constitution took as a model that of France, Belgium, and some of the South American republics. Power was divided, but the legislature was supreme. A bill of rights guaranteed individual liberties. Ortiz, Alan T, *The Philippines: Key Domestic Goals and Aspirations for 1990s*, in Rohana Mahmood and Thangam Ramnath (Ed) *Southeast Asia The Way Forward*, (Kuala Lumpur: Institute of Strategic and International Studies (ISIS) Malaysia, 1992) at 53-57.

<sup>101</sup> Ortiz, Ibid.



participation, constitutional democracy and political institution representation is an enormous inheritance from the United States of America to the people of the Philippines.

During the occupation of the United States of America and the independence period, the form of government based on the law was established. In that situation the people participated in the government, especially through election process and public discussion regarding matters which affected their lives. The citizens are generally free to elect the candidates that they choose for various positions in the government.<sup>102</sup>

According to the 1935 Constitution, the executive, the legislative and the judicial organs are separated, having equal position and independent from one another. According to the 1973 Constitution, the separated executive and legislative authorities are theoretically united in a parliamentary system model. In reality the Executive Chief has the power to formulate laws and regulations through Presidential Decrees. The 1981 Amendment introduced a mixture of several characteristics of the presidential and parliamentary system of government.<sup>103</sup>

Marcos declared martial law<sup>104</sup> and manipulated the constitutional convention to serve his purposes. The 1973 Constitution<sup>105</sup> was a deviation from the Philippine commitment to democratic ideals. Marcos abolished Congress and ruled by presidential decrees from September 1972 to 1978, when a parliamentary government with a legislature called the National Assembly to replace the presidential system. Nevertheless, Marcos exercised all the powers of a President under the old system plus the powers of Prime Minister under the new system. The Marcos dictatorship ended with the People Power Revolution in February 1986 (also called the EDSA

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<sup>102</sup> Id at 268.

<sup>103</sup> The President, the *KBL (Kilusang Bagong Lipunan)*, and almost all writers stated that such system is like modifying the parliamentary system of government. The Chairman of the Supreme Court, Enrique Fernando, mentioned it as a presidential government system. Ibid.

<sup>104</sup> Martial law brought radical changes towards the political institutions of the Philippines as well as impact towards the people's attitude and behaviour. However, the issue is whether such change is aimed to weaken or strengthen the political institutions. Ibid.

<sup>105</sup> When Marcos was driven from office in 1986, the 1973 Constitution was also jettisoned.

Revolution). Confronted with hundreds of thousands in the streets of Manila, Marcos fled to exile in Hawaii.<sup>106</sup> This revolution had restored all the prerequisites of democratic politics: freedom of speech and press, civil liberties, regularly scheduled elections for genuine legislatures, plebiscites, and ways to ensure honest ballot counting.

After Aquino<sup>107</sup> came to power, on March 25, 1986,<sup>108</sup> she issued Presidential Proclamation No. 3, which promulgated an interim "Freedom Constitution" that gave Aquino sweeping powers which was theoretically even greater than those of Marcos. However she promised to use her emergency powers only to restore democracy and not to perpetuate herself in power. The Freedom Constitution was to remain in effect until a new legislature was convened and a constitutional convention could write a new, democratic constitution to be ratified by a national plebiscite. The process took sixteen months.

In November 2000, the Philippine political system faced a severe challenge when the House of Representatives impeached President Joseph Estrada. Estrada was accused of illicitly amassing millions of dollars during his 20 months rule. When the Senate impeachment court controversially decided not to examine a key piece of evidence against him, massive demonstrations took place in cities across the country, a movement dubbed, "People Power II." The movement succeeded in forcing President Estrada to leave *Malacanang*, the presidential palace. In January 2001, the Supreme Court declared the Office of the President to be vacant, and Vice-President Gloria Macagapal-Arroyo assumed the presidency. Estrada objected to the

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<sup>106</sup> Gonzales, *op.cit.*, 254.

<sup>107</sup> Corazon Cojuangco Aquino, universally and affectionately known as "Cory," was a Philippine president quite unlike those who preceded her. Observers have groped for the right word to characterise the Aquino presidency. She was first called a "revolutionary," but later a mere "reformer." When the old landed families recaptured the political system, she was called a "restorationist." *Ibid.*

<sup>108</sup> Aquino inherited a much distorted economy. The Philippines owed about US\$28 billion to foreign creditors. Borrowed money had not promoted development, and most of it had been wasted on showcase projects along Manila Bay, or had disappeared into the pockets and offshore accounts of the Marcos and Romualdez families and their friends and partners. *Ibid.*

decision, contending that he had not abandoned his office, a requirement outlined in the constitution. Nevertheless, the Supreme Court unanimously endorsed the transfer of power as constitutional.

The 1987 Constitution is based on two fundamental principles: separation of powers, and checks and balances. The Constitution mandates a presidential system of government. The President is the head of state, with both symbolic and executive powers. The President is chief administrator over the bureaucracy, with general supervision over local governments and also the chief legislator, responsible for the introduction of the legislative agenda at the start of each congressional session, and has the power to veto any measure approved by Congress. The 1987 Constitution also modified the presidential incumbency to one six-year term.<sup>109</sup>

Article X of the Constitution defines the territorial and political subdivisions of the Philippines. The country has 78 provinces, 84 cities, and over 1500 municipalities. Article X also provides for the establishment of autonomous regions in Muslim Mindanao and the Cordilleras. Local government officials include governors, provincial council members, municipal and city mayors, and municipal and city council members. The *Barangay* is the lowest level of government, and there are approximately 42,000 *Barangays* in the country. *Barangay* governments have the ability to levy taxes, fees, and charges. *Barangay* officials (chairs and council persons) are chosen through direct elections which are held separately from those for higher levels of government.<sup>110</sup>

The President has the authority to appoint and dismiss members of the Cabinet, who are accountable to and assisting the President in managing government affairs. The members of the

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<sup>109</sup> Arlegue, Celito and John Joseph S. Coronel, "Philippine" in *Political Parties in Asia Promoting Reform and Combating Corruption in Eight Countries*, (Eds. Manikas, Peter M and Laura L. Thornton, (Washington: National Democratic Institute for International Affairs, 2003) at 220-221; Gonzales, op.cit., 260-271.

<sup>110</sup> *Ibid.*

electd Cabinet can come from political parties, business communities, government officials or from non- governmental organisations (NGOs). Besides having the authority to form a cabinet, the President is mandated to elect members of the Judicial and Bar Council (JBC), the diplomatic representatives and the military officers starting from the colonel ranks with the approval of the Commission on Appointments (CA). Similar to the Presidential System of the United States of America, the President of the Philippines is also authorised to appoint state high functionary senior officials.<sup>111</sup>

As the head of government, the President is imposed with heavy responsibilities in the financial and budgeting sector as well as the authority to control government. Other task is to lobby the legislature to present a draft of law when the Legislative Institution begins its first meeting session. Even though technically there is no draft law being submitted by the Executive Institution, the President can submit draft of regulation through the Senate or the House of Representatives. Each draft of law, which is a product of the Legislative, must be signed by the President before being put into effect. If it is not signed by the President within 30 days, such regulation shall be automatically effective unless the President objects through a veto.<sup>112</sup>

The Philippines has a bicameral legislative system.<sup>113</sup> The upper body is the 24 member Senate. Senators are nationally elected in a first past the post system to a six-year term and are prohibited from serving more than two consecutive terms. Half of the Senate seats are contested in mid-term elections held every three years. The lower body is the House of Representatives,

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<sup>111</sup> Id at 264-265. See also Bakker, Jan Willem, *The Philippine Justice System*, (Leiden: PIOOM/CIJL, 1997) at 87.

<sup>112</sup> Ibid.

<sup>113</sup> The First Congress was officially declared as such in 1946 by virtue of Republic Act No. 6 after the inauguration of the First Philippine Republic. It was at that time that the Philippine Congress adopted the bicameral system which lasted until 1972 when the Philippine Constitution created a unicameral Batasang Pambansa under a semi-parliamentary government. The 1986 Constitution under the Aquino administration, however, restored the bicameral Philippine legislature.

which includes 209 representatives<sup>114</sup> directly elected from single-member constituencies. Representatives serve three-year term and are restricted to serving more than three consecutive terms. The tendency of political parties in both houses to form coalitions around the party of the president facilitates general cooperation between the legislative chambers.<sup>115</sup>

Philippines political parties developed from pro-independence movements at the turn of the twentieth century. From 1946 to 1965, the Philippines enjoyed a series of peaceful transfers of power between the two major political parties, the *Nacionalista* Party and the current Liberal Party. This period, however, was defined by a lack of strong ideological differences between parties and a high level of inter-party defection. The development of the Philippine party system ceased under the Marcos dictatorship. The regime imprisoned many political opponents or forced them into exile.<sup>116</sup> The revival of electoral politics under the Marcos authoritarian regime greatly restricted genuine party competition. Marcos began to institutionalise one-party dominance with the organisation of the New Society Movement (*Kilusang Bagong Lipunan*, KBL) in 1978.<sup>117</sup>

The Philippines has extensive experience in elections at all levels. Sixteen national and local elections were held. The national elections were held averagely once every 16 months. It is not even added by local elections for the Governor, Mayor and other local state apparatus. The 1987 Congressional Elections were the first free elections in the Philippines since 1971. Meanwhile, the 1992 Elections were the first synchronised elections under the 1987 Constitution. Thus presidential, congressional and local elections were held simultaneously. The second synchronised elections were held in 1998. In these elections a number of politicians filed their candidacies under the ruling Lakas-NUCD-UMDP. The 1998 Elections have also shown

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<sup>114</sup> In the last General Elections, 2007, the House of Representative members are 220.

<sup>115</sup> Arlegue and John Joseph S. Coronel. Loc.cit.

<sup>116</sup> Id at 228.

<sup>117</sup> Teehanke, Julio, "Electoral Politics in the Philippines" in *Electoral Politics in Southeast and East Asia* (Eds. Aurel Croissant, Gabriele Bruns and Marei John), (Singapore: Friedrich Ebert Stiftung, 2002) at 160.

competition between two major political groups -- the administration Lakas and the opposition coalition LAMMP.<sup>118</sup>

The last legislative and local elections were held in the Philippines on May 14, 2007. Positions being contested included half the seats in the Senate, which are elected for six-year term, and all the seats in the House of Representatives. Most representatives win seats by being elected directly, the constituency being a geographical district comprising of about 250,000 voters. There are 220 seats in total for all the legislative districts. Some representatives are elected under a party-list system. Only parties representing marginalised groups are allowed to run in the party-list election.<sup>119</sup>

Unlike Indonesia in which the score from Freedom House increased in 2006 and categorized as a “free” country, the Philippines has turned from a “free” country (since 1996-2005) to a “partly free” country in 2006. This was likely affected by the political situation hampered by coercion and political murders. In the last report Freedom House mentioned that: “The Philippines received a downward trend arrow due to a spate of political killings specifically targeting left-wing political activists.”<sup>120</sup>

### 3.1.5 Different Political Background of Elections

From the description just discussed, some conclusions can be drawn. First, is that in Indonesia, Malaysia, Singapore, and the Philippines, election process is not a new feature as all of these Southeast Asian countries have long experiences of regular elections. Regular elections have been conducted since 1950-1960s in three countries. For example, the first Indonesia's

<sup>118</sup> After the election LAMMP was reorganised into *Laban ng Masang Pilipino* (LAMP). Julio Teehanke, op.cit., 163-173.

<sup>119</sup> [http://en.wikipedia.org/wiki/Philippine\\_general\\_election,\\_2007](http://en.wikipedia.org/wiki/Philippine_general_election,_2007)

<sup>120</sup> <http://www.freedomhouse.org/template.cfm?page=21&year:2007>

General Elections were held in 1955, Malaysia in 1959, and Singapore in 1968. Malaysia and Singapore, to some extent had conducted local elections in their colonial period in 1952 and 1955. Indeed, the Philippines first open General Elections were held in 1907.

The general elections in those countries were conducted under different political background. For example, general elections in Indonesia from 1955 up to the last one in 2004 can be classified into three groups. First, general elections in the liberal democracy period (1955). Second, general elections in the New Order period with the tendency toward authoritarianism (non democratic). Third, general elections in the transitional period of Post New Order Democracy with a movement toward democracy.

In the Philippines, general elections can also be categorised into several periods, such as the period before the Martial Laws, the period during the Martial Laws, and the period after the fall of Marcos (or after the 1987 Constitution). It can be stated that the general elections before the validity of Martial Laws and after the fall of the Marcos reign were democratic general elections. This is very similar to the periods before the New Order and after the fall of the New Order in Indonesia. Meanwhile the general elections in Malaysia and Singapore from the earliest to the recent ones were held in quite similar political background.

Generally, the ruling parties (or ruling coalition parties) always win in all general elections (until recently in Malaysia and Singapore). Yet, in Indonesia and the Philippines, this trend is changing. In the 1999 General Elections, for example Abdurrahman Wahid from the opposition party (the National Awakening Party) became the President.<sup>121</sup> Similarly, in 1991, Estrada became the President of the Philippines.

In Singapore, the government has been controlled by the ruling People's Action Party (PAP) since independence. This uninterrupted power was caused by two important factors. First,

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<sup>121</sup> Before 1999, Presidency constantly dominated by Golkar.

PAP has moved Singapore to become one of the wealthiest countries in the world. Second, PAP has a low tolerance for opposition.

General elections are defined in the constitution of these countries, even though they differ in historical development. For example constitutions of Malaysia, Singapore and the Philippines since the beginning have made numerous provisions regarding general elections and the electoral management bodies in their constitutions. Meanwhile only in 2002, the amended Indonesian Constitution contains several provisions regarding general elections and general election commission.

### **3.2 Overview toward Legal Framework of Elections**

After discussing the historical and political background of general elections held in Indonesia, Malaysia, Singapore, and the Philippines, this sub-chapter scrutinizes whether fundamental suffrage rights, such as the right to vote and register as a voter, the right to run for a public office etc., are safeguarded by legal frameworks in the selected Southeast Asian countries.

Which system could be considered as a good model on the electoral legal framework? One may argue that the system which has prevailed in the western democracies such as the United States of America could be the best model. In fact it is difficult to imagine that such legal framework is applied in Southeast Asian countries. As pointed out by Georges A. Fauriol, expert from International Republican Institute, the uniqueness and diverse complexity on a national scale makes the American process hardly a model. According to Fauriol:<sup>122</sup>

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<sup>122</sup> Fauriol, Georges A, "Election Observation Standards: Establishing Election Standards Case by Case," American Bar Association 2007 Spring Meeting, Panel on International Election Standards, The Fairmont Hotel, Washington, D.C., May 2, 2007.



“The U.S. system is unique. There is no national election office or ministry that oversees U.S. elections, of course. Each county runs its own system and election officials are selected in different ways in different states (some are elected, some are appointed). The state-level secretaries of state oversee elections, though their powers vary from state-to-state. It’s a bit ironic, I suppose, that we frequently point to independent or multi-party election authorities as a key benchmark in U.S. nongovernmental organization (NGO) observation reports, when in fact the U.S. system is quite different. This means no independent election commissions or independent electoral authority, no standard ballots or even method of voting (paper, punch card, electronic, etc.), no uniform laws on polling hours, massive use of absentee voting, no standardized process for dispute resolution. Amazingly, the system generally works and when there is a glitch, there is accessible legal recourse and administrative procedures (recall Florida 2000).”

Fauriol’s opinion is relevant. Southeast Asian countries such as Indonesia, Malaysia, Singapore, and the Philippines should not simply adopt the system applied in other countries, such as the United States of America. It is much better if they follow internationally acknowledged standards on elections and at the same time learn from each other. In order to find out some important principles, we need to analyse deeply the legal frameworks on general elections that have prevailed in these countries.

### **3.2.1 Legal Framework of Elections in Indonesia**

The foundation for the holding of general elections in Indonesia is based on several laws and regulations issued in 2002 and 2004.<sup>123</sup> Firstly, we must examine the 1945 Constitution<sup>124</sup> and afterward several laws particularly the Political Party law,<sup>125</sup> the Legislative General Election law,<sup>126</sup> the Law regarding the Composition and Position of DPR, MPR, DPD and

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<sup>123</sup> Particularly for the 2004 General Elections as the main focus of this study. For the next general elections (2009) new legislations are established, such as Law No. 10 of 2008.

<sup>124</sup> Article 22 E of the 1945 Constitution.

<sup>125</sup> Law No. 31 of 2002.

<sup>126</sup> Law No. 12 of 2003.

DPRD,<sup>127</sup> the Constitutional Court law,<sup>128</sup> the Presidential Decree,<sup>129</sup> the decrees of the National Election Commission (KPU),<sup>130</sup> and other regulations.<sup>131</sup>

According to the international standards,<sup>132</sup> the legal framework should ensure that all political parties and candidates could compete in the elections on the basis of fair treatment. The legal framework must ensure that each political party and candidate enjoys the right to freedom of expression, association, and access to the voters.<sup>133</sup>

Basically, the legal framework for political parties and elections in Indonesia guarantee the right of the people to establish political parties and to be participants in general elections. The legal framework also guarantees freedom of expression and freedom to associate.<sup>134</sup> Nonetheless, there are restrictions on political parties participating in general elections.<sup>135</sup>

Such restrictions are understandable considering that there are hundreds of registered political parties (more than 100 political parties). Allowing all of them to participate in general elections will bring about a very expensive and complicated electoral system. Many political parties do not fulfil the basic requirements as effective political parties. To build a strong government there must be a simple but strong political party system. To this end there is a need

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<sup>127</sup> Law No. 22 of 2003.

<sup>128</sup> Law No. 24 of 2003.

<sup>129</sup> Presidential Decree Number 54 of 2003 regarding Organisational Pattern and Working Order of General Election Commission.

<sup>130</sup> The General Election Commission produced many decisions as the implementing regulations of general elections. Among others are *KPU Decree No. 105 of 2003* regarding the verification and determination of political parties participating in general elections, *KPU Decree No. 640 of 2003* regarding the determination of constituency and procedure of counting for DPR's seats, and *KPU Decree No. 675 of 2003* regarding the procedure for nomination of members of DPR and DPRD.

<sup>131</sup> For example, the *Constitutional Court Regulation No. 04/PMK/2004* regarding the guidance for proceedings in the dispute over general election result and various decisions of General Election Supervisory Committee/ Board stipulating the procedure for the reporting and follow up of reports, dispute settlement, and supervision. The new legislation as part of Indonesian General Election Legal Framework is *Law No. 22 of 2007* concerning Electoral Management Bodies.

<sup>132</sup> See chapters one and two.

<sup>133</sup> See chapter two which elaborated on the element of "ballot access for political parties and candidates."

<sup>134</sup> Article 28D (1) and Article 28E (3) 1945 Constitution.

<sup>135</sup> Firstly, only political parties which qualified under the electoral threshold of two percent in the previous general elections (1999) and secondly, political parties having regional branches at 2/3 of the existing provinces.

to create certain mechanisms in order to allow only effective political parties to run in the general elections. The support of the people can be one of the criteria. This can be established at the very beginning (people support requirement to be election participants) or after polling day (electoral threshold).

That kind of limitation is not violating the Constitution, since the Constitution expressly stated that: "...every person is to abide by certain limitations established by law which intended merely to respect other person's right and freedom, and to fulfil justice, moral, religious values, security as well as public order in a democratic society."<sup>136</sup>

In accordance to the international standards, the right to vote and to be elected are provided in the legal framework. Under the Indonesian legal framework of general elections, there is equal right to vote for each qualified citizen. This is referring to equality before the law and the government as guaranteed in the Constitution.<sup>137</sup> Indeed, there were members of military and police who have yet to vote in the 2004 General Elections. This is due to the political transition period in Indonesia.<sup>138</sup>

The legal framework governs the registration of voters and voter register as well as access to ballots for political parties and candidates. The legal framework has also to deal with democratic election campaigns, access to media and freedom of expression, campaign finance and expenditure, voting,<sup>139</sup> vote counting and tabulation,<sup>140</sup> the role of representatives of parties and candidates, and election observers. In these issues, the existing legal framework can be sufficient to comply with the relevant international standards.

<sup>136</sup> Article 28J (2) 1945 Constitution.

<sup>137</sup> Article 28D (1) and (3) 1945 Constitution.

<sup>138</sup> The recent development, according to *Law No. 10 of 2008*, members of TNI/Polri will not exercise their right to vote on the next general elections (2009).

<sup>139</sup> Section 140 of the *Law No. 12 of 2003* warrants the confidentiality and freedom in voting, including stipulating a number of criminal sanctions in this general election stage.

<sup>140</sup> Sections 96-101 of the *Law No. 12 of 2003* has provided assurance that votes counting at all levels may be attended by the representatives of parties/candidates, observer, supervisor, and the community.

Does the legal framework of elections in Indonesia conform to the international standards? In general, the fifteen standards are complied with by the legal framework of elections in Indonesia. The legal framework is sufficient for the holding of a democratic general election. This assessment is also conveyed by the Institute for Democracy and Electoral Assistance (the International IDEA) and the European Union General Election Monitoring Mission.<sup>141</sup>

### 3.2.2 Legal Framework of Elections in Malaysia

The legal framework for elections in Malaysia is provided by the Federal Constitution of Malaysia, *Elections Act 1958*, *Elections Offences Act 1954*, *Elections Commission Act 1957*, *Local Government Elections Act 1960*, *Elections (Conduct of Elections) Regulation 1981*, *Elections (Conduct of Elections) (Amendment) Regulations 2006*, *Elections (Registration of Electors) Regulation 1971*, *Elections (Registration of Electors) Regulations (Sarawak) 1971*, *Elections (Registration of Electors) Regulations (Sabah) 1971*, *Elections (Postal Voting) Regulations 1959*, *Elections (Postal Voting) (Sabah and Sarawak) Regulations 1968*, *Elections (Control of Motor and Vessels) Regulation 1959*, *Societies Act 1966*, *Defamation Act 1957*, *Sedition Act 1948*, *Elections (Registration of Electors) Regulations 2002*, and *Elections (Postal Voting) Regulations 2003*.

As pointed out by the chairman of the Election Commission, the legal framework on elections in Malaysia does provide the basic ingredients of a working electoral democracy. Firstly, the Federal Constitution clearly established the electoral organisation and its inherent power to organise and to conduct elections. The Federal Constitution and the various election

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<sup>141</sup> See International IDEA, *Kerangka Hukum Pemilu Indonesia Tahun 2004 [Legal Framework of Indonesia 2004 General Elections]*, (Jakarta: IDEA, 2004) and The 2004 Final Report of European Union Monitoring Mission in Indonesia (2004).

laws that have been produced prescribed both the electoral system and the electoral management process and mechanism. However, this legal framework needs improvement because of the absence of certain relevant component in terms of international electoral standards and practices as pointed out by Tan Sri Datuk Seri Panglima Haji Ab. Rashid bin Ab. Rahman (chairman of Malaysian Election Commission):

“In Malaysia the legal framework on election does provide the important elements for the establishment of a strong electoral management process and mechanism. Yet the overall framework clearly does not provide sufficient room for the Commission to manoeuvre and place itself completely in a commanding position to set up a completely level playing field during the election period...”<sup>142</sup>

Every Malaysian citizen has the right to elect the House of People Representatives. However, this registration and elections is not an obligation. Approximately 80 percent of the citizens register for the elections, however only around 70 to 80 percent of them vote in the elections on the General Election day.

With respect to the right to be elected in a general election, the law has stipulated several requirements for a nominated candidate: (1) a candidate must be a Malaysian citizen; (2) aged 21 years old or more; (3) a candidate has never been convicted of any criminal offences (within a period of the last five years); (4) a candidate has never been convicted due to violation of the *Election Offences Act*; and (5) a candidate has never been registered in the *1959 Prohibition and Restraining Act*.<sup>143</sup> The accommodation of the right to vote and to be elected in the Malaysian election laws is in line with the stipulation in Article 21 Paragraph 1 Universal Declaration of Human Rights. It stipulates that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”

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<sup>142</sup> Tan Sri Datuk Seri Panglima Haji Ab. Rashid bin Ab. Rahman, “Electoral Democracy and Electoral Practices in Malaysia,” see <http://www.spr.gov.my/index/electoraldemo.htm>, quoted on November 12, 2007.

<sup>143</sup> Section 13 *Elections Offences Act 1954*

### 3.2.3 Legal Framework of Elections in Singapore

In Singapore, regular and open elections have existed alongside authoritarianism for decades.<sup>144</sup> By virtue of the Constitution, elections must be held at least every five years. Singapore adopts the British electoral system, i.e., "*first past the post*." To vote is not an obligation during the first election, which was held in April 1955 up to the enactment of the Rendel Constitution.

In July 1957, Lee Kuan Yew criticised all forms of corruption in the June 1957 Elections. An investigatory commission was formed to investigate the corrupt practices during elections. The commission discovered that there have been bribery and influencing practices conducted by secret groups and prospective candidates sponsored by working aggressive groups, especially during voting. To overcome apathies in the election process and to protect the integrity of election results from corrupt practices, the commission recommended compulsory voting. The government accepted such recommendation and stipulated that voting in general elections is mandatory. This provision was applied in the general elections held in May 1959 and the succeeding general elections.<sup>145</sup>

The parliament has a term of five years as of its election. However parliament can be dissolved earlier. The general elections must be announced three months after parliament is dissolved. To be eligible to stand for elections, the candidate must be a Singapore citizen, aged 21 or more and meet the requirements stipulated in the Constitution. Citizens who are already 21 years old or more can vote. Voting is an obligation and conducted by secret ballot.<sup>146</sup>

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<sup>144</sup> In this situation, elections have not resulted in broader democratic representations or process. Rodan, Garry, "Elections without Representation: The Singapore Experience Under the PAP" in Taylor, op.cit., 61.

<sup>145</sup> Quah, op.cit., 297-298.

<sup>146</sup> Hwee, op.cit., 210-212.

In January 2001, the Singapore Constitution has mandated that citizens of Singapore have the right to elect their President. There are three main legislations governing the conduct of Presidential Elections: The Constitution of the Republic of Singapore [*The Government, Part V (Chapter 1) - The President*], *The Presidential Elections Act* (Chapter 240A) and *The Political Donations Regulations* (Chapter 236, Rg 2). The citizens of Singapore in accordance with the above legislations elect the President.<sup>147</sup> The President shall be the Head of State, holds office for a term of six years, has the right to participate with the government to prepare budget and to determine public policies, evaluates government activities through the *Domestic Security Law* and *Religious Harmony Regulation*.<sup>148</sup>

Despite the fact that the elections in Singapore have a legal framework to conduct regular elections, this framework was criticised by some parties including opposition parties, such as the Singapore Democratic Party which stated that:<sup>149</sup>

“...In Singapore, the Elections Department is under the purview of the Prime Minister’s Office. Because it conducts its business largely away from public scrutiny, many are as convinced of its impartiality as they would be the act of a ventriloquist over the radio.”

### 3.2.4 Legal Framework of Elections in the Philippines

In the Philippines, the legal framework for elections exists largely, in descending order of authority, in the Constitution, the *Omnibus Elections Code* and subsequent laws, resolutions and rules of procedure of the Commission on Elections (Comelec). The Constitution was passed in 1987, after the fall of the Marcos regime. It sets forth the electoral framework and enshrines

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<sup>147</sup> “Presidential Elections,” < <http://www.elections.gov.sg>>, 17 September 2005.

<sup>148</sup> Ibid.

<sup>149</sup> <http://www.singaporedemocrat.org/elections.html>, quoted on November 12, 2007.

basic principles of freedom of expression, association, suffrage, and confidentiality and sanctity of the ballot. It defines structures of government, terms of office, and sets election dates.<sup>150</sup>

The basic election law is the *Omnibus Elections Code* enacted on December 3<sup>rd</sup>, 1985. It has been substantially amended by the 1987 Constitution, and at least seven major laws: *The Electoral Reforms Law of 1987* (RA 6646) – 1987, *Synchronised Elections Law* (RA 7166) – 1992, *The Party List Law* (RA 7941) – 1995, “*Mindanao Automation*” (RA 8046) – 1995, *Voter’s Registration Act of 1996* (RA 8189) – 1996, *Electoral Modernisation Act* (RA 8436) – 1997, *Fair Election Act* (RA 9006) – 2001, *Act Providing for Synchronised Barangay and SK Elections* (RA 9164) – 2002, and *Overseas Voting Act* (RA 9189) – 2003.<sup>151</sup>

The Comelec issues “resolutions” to exercise its administrative functions and implement the election laws. Resolutions are not just administrative edicts. They have the same force as laws made in Congress. Breach of a Comelec resolution can carry criminal sanctions, with a minimum penalty of one year in jail. Comelec’s practice is to issue resolutions on an *ad hoc* basis. A completely new set of resolutions is issued for each election.<sup>152</sup>

The legal framework of elections in the Philippines is quite clear and transparent. The basic principles of free, orderly, honest, peaceful and credible elections are mentioned in the Constitution of the Philippines and *Batas Pambansa Bilang*.<sup>153</sup> The universal suffrage is clearly regulated in the Constitution, 17 years old, except those who have been disqualified by the law.<sup>154</sup>

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<sup>150</sup> Philippines Election Observation Program Strengthening the Electoral Process. IFES Final Report. August 2004.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> Constitution of Philippines Art IX C Sect 2 and *Batas Pambansa Bilang* 881 *Omnibus Elections Code* of the Philippines sections 5, 9, 52.

<sup>154</sup> Sect 1 Art 5



The legal framework has obliged the maintaining of voter register in a transparent and accurate manner, protecting the rights of citizens qualified to register and to prevent unlawful or fraudulent registration or alteration. Generally, this provision has been complied with in the Philippines, even though it is not quite comprehensive. The *Omnibus Elections Code* of the Philippines section 41 states that the final list of voters shall be posted in the polling places at least two days before the election day.

The registration of any voter shall not be transferred without written notice at least two days before the date of election. No later than the day following the *barangay* election, the board of election tellers shall deliver the list of voters to the election registrar for custody and safekeeping. Section 61 regarding registration stipulates that any organised group of persons seeking registration as a national or regional political party may file with Comelec a verified petition attaching thereto its constitution and by-laws, platform or program of government and such other relevant information as may be required by Comelec. After due notice and hearing, The Comelec shall resolve the petition within ten days from the date it is submitted for decision.

The *Omnibus Elections Code* ensures that each party and candidate will benefit from the right of freedom of expression, and to congregate and have access to voters. The legal framework has stipulated the conduct of political parties and candidates during the campaign period, and the campaign schedule.<sup>155</sup> The *Omnibus Elections Code* ensures that all parties and candidates are provided with equal opportunity to access the media.<sup>156</sup>

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<sup>155</sup> *Batas Pambansa Bilang 881 Omnibus Elections Code of the Philippines Article X*

<sup>156</sup> *Batas Pambansa Bilang 881 Omnibus Elections Code of the Philippines Sect 86 Regulation of Elections*

### 3.2.5 Pattern of Legal Framework

All of these countries have arranged the elections based on their own laws, but the arrangement patterns are different. For its parliamentary general elections, Indonesia has only one statute, i.e., *Law No. 12 of 2003* regarding the DPR, DPD and DPRD elections.<sup>157</sup> In this Law, provisions regarding system and process of elections, electoral management bodies and election offences are covered. Meanwhile, in Malaysia those three matters are set out in three separated legislations, i.e., the *Elections Act 1958*, the *Elections Commission Act 1957*, and the *Elections Offences Act 1954*.

In Singapore, there are two laws for parliamentary elections covering those three aspects. They are contained in the *Parliamentary Elections Act* and the *Political Donation Act*. The other approach is opted by the Philippines, in which the legislation addresses more issues. They are codified in one codification named *Batasan Pambansa Bilang 881*, Omnibus Elections Code of the Philippines which was enforced on 3 December, 1985.

In order to conduct elections, every nation should have a legal basis for the process. In this regards, Indonesia, Malaysia, Singapore as well as the Philippines are no exceptions. They have constitutional provisions, several laws and regulations as the legal framework for elections. The summary is as follows:

**Table 3.1**  
**Legal Framework of Elections**

Country	Constitution	Act	Subsidiary Legislation
Indonesia	The 1945 Constitution	1. Law No. 12 of 2003 for the Legislative General Elections	All of the decrees of KPU, especially which have the nature of further regulating the provisions in the Law No.12 of 2003, the most important are, among others:

<sup>157</sup>Recently, in June 2007, Parliament passed a new law on Electoral Management Bodies (*Law No. 22 of 2007*) which arranged the structure, mandate, and role of Election Commission and Election Supervisory Board.

		<ol style="list-style-type: none"> <li>2. Law No. 23 of 2003 for the Presidential General Elections</li> <li>3. Law No. 31 of 2002 regarding Political Parties</li> <li>4. Law No. 22 of 2007 on Electoral Management Bodies</li> </ol>	<ol style="list-style-type: none"> <li>1. KPU Decree regarding the registration of voters</li> <li>2. KPU Decree regarding the registration, examination and determination of the General Elections participants</li> <li>3. KPU Decree regarding the General Elections campaign</li> <li>4. KPU Decree regarding the General Elections supervisor</li> <li>5. KPU Decree regarding voting and votes calculation</li> </ol>
Malaysia	Federal Constitution of Malaysia	<ol style="list-style-type: none"> <li>1. Elections Act 1958</li> <li>2. Elections Offences Act 1954</li> <li>3. Elections Commission Act 1957</li> <li>4. Local Government Elections Act 1960</li> <li>5. Societies Act 1966</li> <li>6. Defamation Act 1957</li> <li>7. Sedition Act 1948</li> </ol>	<ol style="list-style-type: none"> <li>1. Elections (Conduct of Elections) Regulation 1981</li> <li>2. Elections (Conduct of Elections) (Amendment) Regulations 2006.</li> <li>3. Elections (Registration of Electors) Regulation 1971</li> <li>4. Elections (Registration of Electors) Regulations (Sarawak) 1971</li> <li>5. Elections (Registration of Electors) Regulations (Sabah) 1971</li> <li>6. Elections (Postal Voting) Regulations 1959</li> <li>7. Elections (Postal Voting) (Sabah and sarawak) Regulations 1968</li> <li>8. Elections (Control of Motor and Vessels) Regulations, 1959.</li> <li>9. Elections (Registration of Electors) Regulations, 2002</li> <li>10. Elections (Postal Voting) Regulations 2003</li> </ol>
Singapore	The Constitution of Singapore	<ol style="list-style-type: none"> <li>1. Parliamentary Elections Act</li> <li>2. Presidential Elections Act</li> <li>3. Political Donation Act 2000</li> </ol>	
The Philippines	1987 Constitution of the Philippines	Omnibus Elections Code of The Philippines	<ol style="list-style-type: none"> <li>1. The Electoral Reforms Law of 1987 (RA 6646) – 1987,</li> <li>2. Synchronised Elections Law (RA 7166) – 1992,</li> <li>3. The Party List Law (RA 7941) –</li> </ol>

			<p>1995,</p> <p>4. "Mindanao Automation" (RA 8046) – 1995,</p> <p>5. Voter's Registration Act of 1996 (RA 8189) – 1996,</p> <p>6. Electoral Modernisation Act (RA 8436) – 1997,</p> <p>7. Fair Election Act (RA 9006) – 2001,</p> <p>8. Act Providing for Synchronised <i>Barangay</i> and SK Elections (RA 9164) – 2002, and</p> <p>9. Overseas Voting Act (RA 9189) – 2003.<sup>158</sup></p> <p>10. Comelec Rules of Procedure</p>
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Having reviewed the arrangement of these legal frameworks, they are generally in accordance with the international standards. The fundamental suffrage rights, such as the right to vote and register as a voter, the right to run for public office, etc are all provided in the legal framework. The fact that Indonesia, Malaysia, and Singapore have several laws, while the Philippines has one election code do not pose a serious problem. As mentioned in chapter two, the International Electoral Standards developed by IDEA maintain that a country may adopt separate laws containing provisions specific to individual elected institutions or may include the entire election legislation in one law.

However, "one electoral law regulating all elections" or "codification" approach as applied in the Philippines probably has more advantages. It encourages consistency in election administration and practices. This approach promotes unified implementation of the law in connection with all elections. Besides, it simplifies the drafting process in cases where amendments to legislation are needed."<sup>159</sup>

<sup>158</sup> Ibid.

<sup>159</sup> International IDEA (2002), op.cit., 15.

### 3.3 Other Issues in the Legal Framework: Electoral System and Electoral Management Bodies

The electoral system prevailing in Indonesia is an open list proportional representation system for the House of Representatives and Single Non Transferable Vote (SNTV) for the Regional Representatives Council. Before the 2004 General Elections, the representative proportional system was applied in a further strict manner. Later, it was developed by incorporating more district system aspects but with more than one representative in each electoral district (between three to 12 representatives).

In contrast to the electoral system in Indonesia, the parliamentary electoral system in Malaysia adheres to the electoral system of First Past the Post (or the district system) in which one district has only one representative. This system also prevails in Singapore, however, with a slight variation, which is known as the Non Constituency Member of Parliament (NCMP) at a maximum of six persons. They come from candidates who were defeated or failed to represent one of the constituencies. Just like Malaysia and Singapore, the Philippines exercises the electoral system of First Past the Post. However, this country also recognises the existence of a candidate elected through the party list system. For comparison, it is illustrated in the following table.

**Table 3.2**  
**Electoral System and Boundary Delimitation**

Country	All seats in at least one chamber be contested	Electoral System	Criteria of Boundary Delimitation	Independent Body to undertake boundary delimitation.
Indonesia	All 550 members of the House of Representatives are directly elected	Open list proportional representation system for House	"Equality" of population Compactness of	Electoral management body (KPU) <sup>160</sup>

<sup>160</sup> In recent development, boundary delimitation for DPR elections is determined in the attachment of the new Law on General Election (Law No. 10 of 2008), rather than determined by Election Commission (KPU).

	All Regional Representatives Council candidates are directly elected	of Representative Single Non Transferable Vote (SNTV) for the Regional Representatives Council	constituencies	
Malaysia	The <i>Dewan Rakyat</i> (House of Representatives) is composed of members elected directly on the basis of universal adult suffrage	First Past The Post	"Equality" of population  Conformity with local jurisdiction boundaries	Electoral management body (SPR) assisted by the Survey Department, the Statistics Department and the Attorney General's Chambers
Singapore	The parliament is a single house and has three types of Members of Parliament (MPs). They are the Elected MPs, Non-Constituency MPs and Nominated MPs.  Nominated MPs are not elected, NMPs shall not vote on Bills pertaining to financial and constitutional matters.	Simple majority (First Pass The post)  The electoral system is based on single-member constituencies and group representation constituencies.	"Equality" of population  Respecting natural barriers	Electoral Divisions demarcated by the Prime Minister. When necessary, the Minister charged with the responsibility for elections may appoint an Electoral Boundaries Review Committee to assist the Minister in the review of the boundary delineation.
The Philippines	The Philippines has a bicameral legislative system. The upper body is the 24 member Senate. Senators are nationally elected.  The lower body is the House of Representatives, directly elected	House of Representative: First Past The Post system from single-member constituencies.  Some representatives are elected under a party-list system	Compactness of constituencies  Geographic size of district  Communities of interest/cultural concerns	Legislature (specific chamber)

Based on the description, it can be concluded that Malaysia, Indonesia and the Philippines already implement the international standards which state that “all seats in at least one chamber of the national legislature be freely contested.” In this issue, both chambers in Indonesia and the Philippines are directly elected in the elections. Meanwhile, the existence of Nominated MPs in Singapore’s parliament has caused Singapore’s legal framework not to meet the international standards which require that all seats in at least one chamber of the national legislature be freely contested on a popular vote, held at reasonable intervals as established by law.<sup>161</sup>

With regards to an independent institution having authority to determine boundary delimitation, both Indonesia and Malaysia give their respective Election Commission such authority. However, in recent developments, according to new election laws, the boundary delimitation for the DPR has been explicitly stated as an attachment in *Law No. 10 of 2008*. This is similar to the Philippine legal framework. Meanwhile, in Singapore there is “the Electoral Boundaries Review Committee” appointed by electoral-related minister. This committee functions to assist the Minister in the review of the delineation of boundaries.

Reviewed from an international perspective which stated that “the legal framework provide for an impartial, non-partisan, independent and professional body of persons or an institution to undertake boundary delimitation”, it can be concluded that Malaysia has already complied with such a provision. Indonesia and the Philippines, on the other hand, have not fully complied, as the boundary delimitation has been provided in their electoral laws. This may give parliamentarians the opportunity of determining boundary delimitation which is more favourable to them.

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<sup>161</sup> International IDEA (2002), op.cit.24.

In contrast, boundary delimitation in Singapore is determined by a minister, assisted by a special committee. This practice is very much in favour of the ruling party. To conclude, based on the international standards, Malaysia is more in accordance with such standards, while Singapore does not fulfil it. This fact is also criticised by the opposition party, Singapore Democratic Party which stated that:<sup>162</sup>

“...the Electoral Boundaries Review Committee redraws the boundaries and then submits its report to the cabinet for approval. The opposition and the public are not consulted, and the report bypasses parliament. Changes are announced only shortly before the elections. As a result, constituencies that showed strong support for the opposition party have undergone major surgery.”

This criticism is also supported by Jeremy Grace who concluded that:

“Lack of independence of electoral officials: The government controls both the Elections Department and the Electoral Boundaries Review Committee. Redistricting is conducted in secret, with no public input or oversight, and the EBRC staff is appointed by the Prime Minister’s office, compromising its neutrality.”<sup>163</sup>

With regard to electoral management body, it is important to note that this body is highly essential for the holding of elections and to ensure free and fair principles. It is understandable that international organizations have maintained that: “Provisions of the law should ensure that an objective, unbiased, independent and effective administrative structure is in place.” Reviewed from this standard, it can be concluded that the position, structure and selection process of the election commission in Indonesia, the Philippines and Malaysia are in line with such international standards.

However, unlike electoral management bodies in Indonesia, Malaysia and the Philippines, there is no independent electoral body in Singapore. The holding of elections is

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<sup>162</sup> <http://www.singaporedemocratic.org/index.html>

<sup>163</sup> Grace, Jeremy, “Drawing Districts to Ensure Super-Majorities in the Parliament,” the Delimitation Equity Project, USAID. <http://aceproject.org/ace-en/topics/bd/bdy> cited on 1 January, 2008



conducted by a special electoral unit in the Prime Ministerial office. This can be considered as a weakness in achieving free and fair elections.

Though independent, the Election Commission in Indonesia and the Philippines can be sued by election participant (political party or candidate), while in Malaysia and Singapore, the Election Commission and its officers are to be kept out of election petitions. Since an Election Commission can commit certain mistakes in an election process, it is submitted that all election commissions should also be subjected to the legal process.

### **3.4 Legal Framework of Elections: Improvement for the Future**

Based on the above-mentioned description, we can conclude that a democratic election requires a legal framework, which is conforming to the international standards for elections as set out in various international documents. The existing legal frameworks in Indonesia, Malaysia, Singapore, and the Philippines generally provide the important elements for the establishment of strong electoral management process and mechanism.

However, the overall frameworks still need to be improved in order to make the legal framework in line with the international standards. The important aspects that need to be improved among others are the establishment of an independent electoral management body and independent body to determine boundary delimitation. The Singapore's legal framework is weak on the first and second aspects, while Indonesia's legal framework is weak on the second aspect.

The international standards do not emphasise the mandatory obligation of a legal framework, especially in the level below the constitution, to be stipulated in a single document. The most important thing is that all rules in the legal framework contain the prescribed standards. At the very least the legal framework which is more technical as being provided by a general

elections body should be set out in the constitution (especially rules relating to the existence of elections, the principles of elections, election institutions, and the settlement of election offences), law at national (federal) level,<sup>164</sup> and regulations. However a “codification” approach as applied in the Philippines has more advantages. It encourages consistency in election administration and practices.

Thus, it is important to ensure that the legal framework should not benefit certain parties, including the ruling party. Such partial legal framework can be avoided if the regulations are formulated by an independent electoral body, instead of being formulated by the government. Furthermore, they need to be set out in the constitution, laws, and the decision of an independent electoral body. Additionally, the legal framework needs to include safeguards over election process against various frauds, violations, or offences.

Each legal framework must provide sanction for a number of certain violations, a determination of types of violations which are capable of annulling the election result, a determination of rules to process the violations both through criminal law and through election petition. Whether such rules must be separately stipulated from the general election act or can it only be a part of it, the international standards does not impose restriction on such matter. The most important thing to be considered is the scope of the rules, swift yet with a fair mechanism,

One important part of the legal framework is the arrangement of election offences which is the central theme of this research. The next chapter describes election offences, including the definition, purpose, and arrangement of these offences. Following that, chapters five and six discuss the settlement of election offences through criminal process and election petition.

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<sup>164</sup> Especially relating to electoral system, determination (boundaries, district, and definition of election unit boundaries), the right to vote and to be elected, election organising body, voter registration and voter register, access to ballots for political parties and candidates, democratic election campaign, access to media and freedom of expression, campaign financing and expenditure, voting, vote counting and tabulation, role of the representatives of the parties and candidates, election observer, and compliance over and enforcement of election law.

## CHAPTER 4

### ELECTION OFFENCES

*“Sanctions for election violations should be clear, coherent and effective. Otherwise, there will be more and more violations that will eventually generate a lot of conflicts”<sup>1</sup>*

This chapter discusses the meaning of election offences and how each country regulates it. It also analyses kinds of election offences and whether election offence provisions are provided in separate laws focusing on election offences or they are included in one election legislation. Basically, the international standards on this issue have been incorporated in the election laws of Indonesia, Malaysia, Singapore, and the Philippines. In essence, the legal framework in these four countries has attempted to ensure the fairness of elections. However, the number, types and scope of the election offences in these selected countries are different from one another.

#### 4.1 Purpose of Creating Provisions on Election Offences

According to international standards, a legal framework should elaborate sanctions for particular law violations.<sup>2</sup> To ensure the fairness of elections, a number of technical and legal measures effectively designed to protect the process from bias, fraud or manipulation are required. Such measures include, *inter alia*, provisions for outlawing and punishing corrupt practices.<sup>3</sup>

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<sup>1</sup> Todung Mulya Lubis, “Pemilu 2004 tanpa Pengawasan” [2004 Election without Supervising], Paper presented at the Workshop, *Settlement of Complaint and Election Law Enforcement*, Jakarta, September 10, 2002.

<sup>2</sup> International IDEA, *International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2002) at 93.

<sup>3</sup> United Nations Centre for Human Rights. *Professional Training Series No. 2, Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: United Nations, 1994) at 11.

Many countries create election offences rules in their election laws. Each criminal provision is created for a legal purpose which reflects the legislator's intention. For instance, the "long title" of *Election Offences Act 1954* in Malaysia states:<sup>4</sup> "An Act to prevent electoral offences and corrupt and illegal practices at elections; to provide for the appointment of election agents and to control election expenses; and to provide for election petitions."

To uphold democracy, it is highly critical to protect the integrity of elections. Therefore, lawmakers have regulated several unfair practices in elections as criminal offences. In relation to election regulations, they should not only regulate the process of elections, but they also need to forbid behaviours which may hamper the essence of free and fair elections.

Stipulation of election offences in a specific provision is very much related to the free and fair election principles. The purpose is to prevent electoral offences, corrupt practices and illegal practices at elections. In the context of Indonesian elections, that principle is widely known as the Direct, Public, Free, and Confidential (LUBER) principle.<sup>5</sup> Fulfilment of those principles will ensure democratic elections, which is very important for Indonesia that has been in transition to democracy since 1999. The objective of elections is to form a democratic and strong government supported by the people.<sup>6</sup>

The Indonesian election principles of "fair and just" have been in use since the 1999 General Elections. It was a corrective measure for the new order's practices (1971-1997) of the direct,<sup>7</sup> public,<sup>8</sup> free,<sup>9</sup> and confidential principles,<sup>10</sup> which could not ensure a democratic

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<sup>4</sup> The long title gives some indication of the purpose behind the Act. It may be of some use in deciding what the acts is all about. Nuraisyah Chua Abdullah, *Question & Answer on Malaysian Courts, Statutes, Cases & Contract, Tort and Criminal Law*, (Petaling Jaya: International Law Book Services, 2004) at 44.

<sup>5</sup> In Indonesian language : *Langsung, Umum, Bebas, Rahasia, Jujur dan Adil* or LUBER JURDIL.

<sup>6</sup> General elucidation of *Law No. 12 of 2003*.

<sup>7</sup> The voter should vote by him/herself and cannot be represented by other person.

<sup>8</sup> Each qualified citizen is entitled to vote, without restrictions.

<sup>9</sup> Without coercions.

<sup>10</sup> The choice of the voter remains a secret.

election. Lack of honesty by the electoral management bodies, supervisors, election participants and related institutions and also discrimination against opposition are the main reasons for its failure.<sup>11</sup>

Consequently, if the principles of just and fair are upheld, the election offences regulations along with its sanctions can be imposed properly. It means that if these two principles are not upheld, the elections become undemocratic. This situation suggests that there is no consequence for violations or offences and this undermines true democracy. The offender will not be punished and the election result will not be cancelled.

Based on the description above, it can be concluded that the purpose of creating election offences regulations is not only to protect the interest of the election participants (political parties or candidates) but also the electorates or the voters. Provision regarding election offences is addressed to protect the general election process from various violations. This protection will improve the quality of service shown by the elected representatives or government leaders in representing the aspirations of the voters.

#### **4.2 Definition and Scope of Election Offences**

The term “election offences” is frequently encountered by those discussing elections. Another term that is frequently used is corrupt practices. To protect the voters, the parties contesting in an election and the people from fear, intimidation, bribery, fraud, and unfair practices is highly essential factor for a democratic government in order to ensure a free and fair

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<sup>11</sup> This made the elections from 1971 to 1997 difficult to be identified as free and fair elections. For example, if a violation was committed by the government’s party, then it rarely receive a sanction (since the election institutions and supervisors were considered participating in it), On the other hand, if the violation was committed by a non-governmental party, then the election institution and the supervisor would impose sanctions.

election.<sup>12</sup> If the election is won through unfair practices, it would be difficult to claim that a member of parliament truly represent the people.

There is no definition provided by the statutory regulations in Indonesia regarding election offences. The *Indonesian Criminal Code* (KUHP) has five sections related to election offences without mentioning election offences explicitly and specifically.<sup>13</sup> A similar approach was taken in election laws enacted in Indonesia from *Law No. 7 of 1953*, *Law No. 15 of 1969*,<sup>14</sup> and *Law No.3 of 1999*, as well as *Law No. 12 of 2003*. The respective laws contain election offences, but none of them gives a definition of election offences. The concept of election offences can be identified from elements of the criminal provisions.

From various elections related literature in Indonesia, there is no in-depth discussion regarding the concept and scope of election offences. Sintong Silaban for example, described the meaning of offences in general and applied it in connection to elections.<sup>15</sup>

In Malaysia, the phrase election offence is found either in the *Election Act 1958* or in the *Election Offences Act 1954*. The Malay equivalent for election offences is “*kesalahan pilihan raya*” (election offences). Therefore, the term election offence is indeed deliberately made by the legislator. Even though the term election offence is an original term of law, its definition is not provided. Apparently, from the substance and the intention of formulating the law, it is

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<sup>12</sup> Jhingta, Hans Raj, *Corrupt Practices in Elections – A Study under the Representation of the People Act, 1951*, (New Delhi: Deep & Deep Publications, 1996) at 1-4.

<sup>13</sup> The crimes in Indonesia mostly are collected in KUHP, some of them are contained in criminal provisions outside KUHP (such as in the law regarding the elimination of corruption), and some other crimes are scattered in various non-penal statutory regulations (such as in banking law, capital market law, and political party law). In the KUHP, the election offences are contained in sections 148 to 152.

<sup>14</sup> This law has been amended several times with *Law No. 4 of 1975*, *Law No.2 of 1980* and *Law No.1 of 1985*.

<sup>15</sup> See Sintong Silaban, *Tindak Pidana Pemilu (Suatu Tinjauan dalam Rangka Mewujudkan Pelaksanaan Pemilu yang Jujur dan Adil)* [Election Offences, An Overview toward Free and Fair Election], (Jakarta: Sinar Harapan, 1992) at 48-53.

understandable what election offences are. Similarly, this term is found in court decisions in Malaysia.<sup>16</sup>

In fact, when the term and definition of election offences in Singapore are discussed, it is the same as that of Malaysia. Initially these two countries were one country (1963-1965) and they inherited the same legal system. As happened in Malaysia, the term election offence is found in the Singapore *Parliamentary Election Act* but, again, the definition is not provided.

In literature on elections, it is difficult to find the definition of election offences. In the Philippines, the phrase election offence is found in the *Omnibus Election Code* of the Philippines, i.e. in section XXII, but its definition is not provided in that Code. Patrick Patino dan Djorina Velasco use a term "election violence" which comprises: killings; abductions; terrorism; physical attacks on rallies, homes, offices and vehicles of candidates and supporters; and any other acts that result in deaths, physical injuries and/or damage to properties. Election-related violence will also refer to intimidation, coercion and non-physical forms of harassment. These are not strictly incidents of violence *per se*. However, the Philippine election laws include these as election offences since they curtail voters' decision-making and are preliminary acts to violence.<sup>17</sup>

From the above-mentioned description, it can be seen that these four countries do have provisions regarding election offences. However in the legislations of each country, there is no definition of election offences or election fraud. Accordingly, election offences could be understood as "all conducts that are prohibited by the respective laws." The brief description

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<sup>16</sup> For decisions regarding election offences in Malaysia, refer to Tunku Sofiah Jewa, *Malaysian Election Laws*, Vol. 1 – 4 (Kuala Lumpur: Pacifica Publications, 2003).

<sup>17</sup> Patino and Djorina Velasco, "Election Violence in the Philippines", [http://www.fes.org.ph/papers\\_elecviolence.htm](http://www.fes.org.ph/papers_elecviolence.htm), September 5, 2005.

regarding the existing term and definition in Indonesia, Malaysia, Singapore, and the Philippines is presented in the following table.

**Table 4.1**  
**Term and Definition of Election Offences**

Country	Term	Notes
Indonesia	<i>Tindak Pidana Pemilu</i> (Election Offences)	Since the term election offences does not exist in the <i>Law No.12 of 2003</i> , its definition or meaning is not provided.
Malaysia	<i>Kesalahan Pilihanraya</i> (Election Offences)	The term election offences can be found either in the <i>Election Act 1958</i> or <i>Election Offences Act 1954</i>
Singapore	Election Offences	The term election offences can be found in the <i>Parliamentary Election Act</i> .
The Philippines	Election Offences	The term election offences can be found in the <i>Omnibus Election Code of the Philippines</i> .

It appears that, in these four countries' legal systems, the term election offences is quite understandable. Therefore, even though the law does not define the term, practices related to election offences prevail. However, a definition or technical term of election offences is still necessary to be formulated, as it is useful for the present study.

The phrase *election offences* is derived from two words, i.e., "election" and "offence." The definition of "election" has been discussed. It is time to discuss the term "offence." This term means: "felonies or misdemeanor; a breach of the criminal laws; violation of law for which a penalty is prescribed. The word "offence," while sometimes is used in various senses, generally implies felonies or misdemeanors infringing on public as distinguished from mere private rights, and punishable under the criminal laws."<sup>18</sup> Therefore, it is clear that an offence is an action threatened by criminal sanction.

<sup>18</sup> Black, Henry Campbell, *Black's Law Dictionary*, 6th Edition, (St. Paul, Minn: West Publishing Co, 1990) at 1081.



Whether such an “offence” has criminal sanctions as well as civil remedy still needs to be analysed. There are different perspectives among different legal systems. Regarding this issue, Black’s Law Dictionary states “...and punishable under the criminal laws, though it may also include the violation of criminal statute for which the remedy is merely a civil suit to recover the penalty.”<sup>19</sup>

Based on the above-mentioned definition of the words “election” and “offence,” and for technical purposes of the present study, the definition and limitation of “election offences” can be formulated in a simple manner as: “All violations of provisions related to election process as far as such violations are threatened by criminal sanctions under the laws regulating elections.”

Based on such a definition, actions related to the elections but not stipulated in the laws on elections cannot be categorised as “election offences.”<sup>20</sup> This is reasonable since, in Indonesia for example, election offences are often too broadly interpreted as “every violations that take place during election period.” With this broad definition, election offences include any offences such as battering (or even murder) related with political affiliation and traffic violations during campaign (which actually is a violation of traffic law). Even administrative violations are often considered as election offences.<sup>21</sup>

In addition to the term “election offences,” the term “corrupt practices” is also frequently used. Sometimes those two terms are used interchangeably. The term “election offences” is

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<sup>19</sup> Id at 1981.

<sup>20</sup> As an example, criminal action related to the election but stipulated in the political party law (and not in the election law) is not classified as “election offences.” Another example is violation of traffic regulation when conducting campaign in a public street is an ordinary criminal action (i.e., violating the traffic law) and not election offences. Likewise, an action of corrupting the campaign budget, committed by election coordinator, is included as corrupt criminal action (violating the anti corruption law) and not violating the election law. Violation of the election law which is only threatened by administrative sanction or only by civil sanction is not categorised as election offences in this definition.

<sup>21</sup> The differentiation of election offences and violations categorised is also important since it relates to the institutions authorised to handle it, for example, in Indonesia, traffic violations during campaign period (since it is not election offences) not need to be reported to the Election Supervisory Committee (*Panwaslu*). As well as with the battering by political oppositions, it is an offence in the Criminal Code (KUHP), therefore it can be directly reported to the Police.

broader than the term “corrupt practices” because “corrupt practices” is only one type of election offences. In addition to corrupt practices, there are also illegal practices and other types of deviations. In United Kingdom, corrupt practices have been provided under the heading of ‘election offences’ which include not only corrupt practices but also consist of illegal practices, illegal payments, and employment and hiring.<sup>22</sup>

Based on the above-mentioned description, the next sub-chapters discuss further how Indonesia, Malaysia, Singapore, and the Philippines provide for election offences in their legal frameworks.

#### 4.3 Election Offences in Indonesia

As has been mentioned, according to international standards, the national electoral law must protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices. *Law No. 12 of 2003* has established four sections that prohibit most of the above-mentioned offences. In *Law No. 12 of 2003*, it sets out behaviours, which are categorised as offences stipulated in the provisions of sections 137, 138, 139 and 140.

Section 137 sets out seven election offences, which are related to the registration stage of elections for either voter registration, participant registration or registration of candidates for members of the House of People’s Representatives, the House of Regional Representatives and the Provincial/ Regency/Municipality DPRD. The prohibited behaviours which are related to these stages are providing false information which causes another person to lose his/her right to vote, forging a document, obstruction, and intimidation. It should be noted that election offences

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<sup>22</sup> *Representation of People Act, 1983*, sections 168, 169, 175, and 102.

concerning providing false statement or making, using or instructing to use false documents can be committed at any other stage besides the registration stage.

Section 138 contains seven election offences, which are related to the campaign stage of the elections, related to either the campaign funds or prohibitions in campaigning. The prohibited behaviours which relate to this stage are campaign violations, intimidation, campaigning outside the scheduled time frame, disrupting, obstructing or disturbing a campaign, making or receiving campaign funds exceeding the specified limits, and giving false information in the Election Campaign Fund Report.

According to Transparency International (TI) and International Foundation for Electoral System (IFES), each country has legal provisions concerning political party funds. Most countries have established political funds limitation. However, they are different in terms of the maximum amount and criteria of political funds limitation. Yet, they agree that the provisions are created to prevent corruption of the existing democratic mechanisms.<sup>23</sup> Considering the objective of political funds regulation, it is important to prevent political funds violations. *Law No 12 of 2003* has attempted to prevent and has established criminal sanction for the offences. However, in practice, it is not easy to prevent such violations, particularly as seen in the 1999 and 2004 Elections.<sup>24</sup>

Section 139 contains eight election offences related to voting stage or balloting stage. The offences contained in this section are undue force, threat, violence, obstruction, bribery, and personation. However, offences contained in the section 139 (2) regarding money politics may occur at any other stages, e.g. during campaign stage.

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<sup>23</sup> Transparency International – IFES, *Standar Akuntansi Keuangan Khusus Partai Politik [Accountancy Standards for Political Party]* (2002).

<sup>24</sup> For more detail discussion concerning this issue, see Ibrahim Fahmi Badoh and Luky Djani, *Korupsi Pemilu [Electoral Corruption]*, (Jakarta: Indonesian Corruption Watch, 2006)

According to Fahmi Badoh and Lucky Djani, the impact of money politics or bribery in the election process is the defect of electoral integrity, in which the electors give their votes based on *pseudo* conscience and economic factors, instead of pure conscience. Based on the 1999 and 2004 Elections, Fahmi and Djani concluded that bribery and money politics in Indonesia had taken place mostly in low income areas.<sup>25</sup>

Meanwhile section 140 contains four election offences, which are related to post voting stage. This section prohibits several behaviour which undermine results of elections such as deliberately or negligently destroy or cause a loss of a voting result. As provided in the 12<sup>th</sup> international standard, the legal framework must ensure that all votes are counted and tabulated accurately, evenly and openly. Fair, honest and open vote counting is the basis of democratic elections.<sup>26</sup> Referring to this norm, the existence of several penal sanctions for violations at this stage are highly essential.

As previously mentioned, *Law Number 12 of 2003* covers various election offences from the registration of voters and participants of elections, the campaign of elections, voting and votes counting, to postal voting which are sensitive to fraud. From the whole sections there are 31 election-offences.<sup>27</sup> Section 138 (1) contains five election offences; Section 138 (2) contains two election offences. Based on substance, the whole 31 election-offences are partly corruption, obstruction, undue influence, personation, bribery, and intimidation.

In *Law No. 12 of 2003*, election offences are not divided clearly into several categories, different from that of Malaysia (as will be discussed later). However, the fact that those offences

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<sup>25</sup> Ibrahim Fahmi Badoh and Luky Djani, *op.cit.*, 15.

<sup>26</sup> See chapter two.

<sup>27</sup> In *Law No. 10 of 2008* the number of election offences was increased from 31 to 51. Most of the new offences are related to the electoral management body's misbehave.

are divided into four different parts can be interpreted that the purpose of such division is highly related to certain stages of the election process.<sup>28</sup>

Related to international standards, the legal framework of elections in Indonesia has elaborated on the punishments for certain violations of law.<sup>29</sup> The legal framework has attempted to ensure that the fairness of elections requires a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures include provisions for outlawing and punishing corrupt practices.

In this regard, Indonesia has attempted to protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices. So far, 31 election-offences have been stipulated with the purpose of protecting the election political process from various violations at each stage. Indeed, there are minor weaknesses in these provisions, especially regarding the lack of rules in prohibiting official misfeasance and treating.<sup>30</sup>

In fact, specific provisions regarding official misfeasance had already been stipulated in the previous election law (*Law No. 3 of 1999*). However, it is not specifically stipulated in the *Law No. 12 of 2003*. Nonetheless, there is provision in section 141, which states that if an election offence is committed by an election participant and organisation as well as election official, a heavier criminal sanction will be imposed.

What might have occurred in practice is an error in a counting/ calculating process committed by an election official. Such an official will not be imposed with sanction since it is

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<sup>28</sup> There are several exceptions, such as offences contained in section 137 paragraphs (3) and paragraph (4) which actually can be committed at other stages.

<sup>29</sup> International IDEA (2004), op.cit., 50-52.

<sup>30</sup> In Malaysia as a comparison, electoral offences cover seven election offences which are committed by election officers. These election offences do not include six election offences related to the obligation to maintain the secrecy of a general election.

merely negligence, not intentional conduct. Negligence committed by election officials, according to the *Law No. 12 of 2003* is not an offence. Besides, it is very difficult to prove this in court. Official misfeasance is only regulated in the electoral management body's Code of Ethics. No criminal sanction for this conduct is available.

The absence of rules regarding this issue, especially in the voting and vote counting stage has created an opportunity for corrupt election officials to commit manipulation with slight risk of being punished. Recognizing this, the provision regarding the deviating act of an election official both intentionally or negligently must be expressly forbidden.

In addition to official misfeasance, the other provision which is not established yet is regarding "treating." Even though a provision which is similar to "treating," i.e., bribery is already in place, it cannot be applied to "treating." In other countries, this matter is distinguished from bribery, therefore governed in a separate provision. For example, in Malaysia, there is criminal sanction for every person who:

"...corruptly ... gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provisions, or any money or ticket or other means or device to enable the procuring of any food, drink, or refreshment, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election ..."<sup>31</sup>

In the 2004 General Elections a debate arose regarding practices which can be categorised as treating, but could not be handled by *Panwaslu* since there is no clear and explicit provision regarding treating.

Meanwhile, if provision regarding bribery is to be used in "treating" conduct, it is not appropriate. During the parliamentary election campaign, for example, it was debatable whether transportation expenses and meal/drink expenses for campaign participants which normally

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<sup>31</sup> Section 8 of *Election Offences Act 1954*. Similar provision is contained in section 58 (1) of Singapore's *Parliamentary Elections Act*.

involve 10 thousand to 100 thousand rupiah (or even more) can be categorised as a violation. Some experts state that this conduct is a violation, while others consider this as a normal practice because the people participating in an electoral campaign need expenses to visit a location.

It is submitted that the conduct of giving money for transportation or meal/drink is easily misused to persuade people to elect a certain party or candidate. In addition, it is very difficult to differentiate the amount of money, which is appropriate for transportation from the amount of money required for persuading people. Therefore, it would be better if the provision regarding treating was adopted.

With regard to treating, the election offence provision of Indonesia does not incorporate what is dictated by international standards which state that “treating” is part of offences that should be prohibited to protect the election process. This weakness needs to be addressed in future legislation.

#### **4.4 Election Offences in Malaysia**

In Malaysia, election offences can be found in a specific legislation, namely *Election Offences Act 1954 (Act 5) (Revised-1969)* which applies to all Malaysia, both in Peninsula and Sarawak and Sabah. This Act is sub-divided into seven parts: Part I (Preliminary and Interpretation); Part II (Electoral Offences); Part III (Corrupt Practices); Part IV (Elections Agent, Elections Expenses and Illegal Practices); Part V (Excuse for Corrupt or Illegal Practice); Part VI (Grounds for avoiding Elections); and Part VII (Election Petitions).

The election offences are found in three parts: Part II, Part III, and Part IV of the Act. Part II comprises three types of offences: offences by any person, offences by elections officers, offences of promoting feelings of ill-will or hostility, and offences related to the maintenance of

secrecy at elections. Meanwhile, Part III comprises four types of offences: personation, treating, undue influence, bribery, and other forms of corrupt practices. Illegal practices are regulated in Part IV.

Based on the *Election Offences Act 1954 (Act 5)*(Revised-1969), several election offences can be categorised into three categories: electoral offences, corrupt practices and illegal practices.

Electoral offences are divided into four categories, i.e. offences by any person, offences by elections officers, offences of promoting feelings of ill-will or hostility, and offences related to the obligation to maintain the secrecy of elections. There are 15 election offences which may be committed by anyone (individual), seven election offences may be committed by elections officers, one offence of promoting feelings of ill-will or hostility and six election offences related to the obligation to maintain the secrecy of elections. Therefore, there are entirely 29 offences categorised as electoral offences.<sup>32</sup>

In Part III *Election Offences Act 1954*, which regulates corrupt practices, 16 offences are categorised as corrupt practices. Corrupt practices are divided into five types of offences, i.e.: personation, treating, undue influence, bribery, and other forms of corrupt practices. One offence is categorised as personation, another as treating, and the other as undue influence; moreover nine offences are categorised as bribery offences, and four other as corrupt practices. Therefore, the entire election offences included in the corrupt practices are 16 offences.

The last category is illegal practices. They are offences since they violate the provisions in Part IV regarding elections agent, elections expenses and illegal practices. There are 23 offences found by looking at the violations of the provisions in Part IV, which entails criminal

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<sup>32</sup> Every person who abets the commission of or attempts to commit an offence specified in this part shall be liable, on conviction, to the punishment and disqualifications prescribed for that offence.



sanctions. These include illegal practices related to payment of expenses through election agent, prohibition of certain expenses, expenses in excess of maximum, illegal practices related to certain expenditure, and limitation of political propaganda on nomination day. Therefore, the entire election offences contained in the *Election Offences Act 1954* are 68 election offences.

Related to international standards, the election legal framework of Malaysia, particularly *Election Offences Act 1954*, has elaborated punishment for certain violations of law. The legal framework in this country has attempted to ensure that the fairness of elections requires a number of technical and legal measures. The electoral law in Malaysia has attempted to protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices.

#### **4.5 Election Offences in Singapore**

There are in total 55 election offences in Singapore. Election offences in this country are provided in the *Parliamentary Elections Act*. Carefully scrutinized, in many respects, the offences are similar to election offences as stipulated in the *Election Offences Act 1954* of Malaysia.

However, there are several differences between the two. First, in Singapore, election offences are integrally embodied in the *Parliamentary Elections Act* and are not contained in specific legislation like the *Election Offences Act* in Malaysia. Second, in Singapore, there is no strict division into three categories as that of Malaysia, in which election offences are divided into electoral offences, corrupt practices, and illegal practices.

If observed, the election legal framework in Singapore has elaborated on the punishment for certain violations of law.<sup>33</sup> The legal framework in this country, as that of Malaysia, has attempted to ensure that the fairness of elections requires a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures include provisions for outlawing and punishing corrupt practices. Electoral legal framework in Singapore has attempted to protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices.

#### 4.6 Election Offences in the Philippines

In the Philippines, election offence cases deal with violations of the *Omnibus Election Code* and Comelec resolutions. There are hundreds of offences, covering all aspects of the electoral process. For instance, the offences include showing a cockfight on election day, illegally releasing prisoners immediately before and after the election, deliberate blurring of fingerprints during registration and failure to clear the canvassing table of unnecessary writing paraphernalia. Each election offence at the same time is a criminal offence. The penalties are strict; any person found guilty will be imprisoned for not less than one year and not more than six years. Probation is prohibited. Any offender, regardless of the nature of the offence, is disqualified from holding public office, and deprived of the right to vote. Parties are subject to mandatory fines of between 100,000 - 500,000 pesos.<sup>34</sup>

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<sup>33</sup> International IDEA, loc.cit.

<sup>34</sup> Philippines Election Observation Program Strengthening the Electoral Process, IFES Final Report, August 2004. at.28.

The total election offences in the Philippines are 177 offences. This number is the most compared to the number of election offences in Indonesia (31), Malaysia (68), and Singapore (55). The large number of election offences in the Philippines is, among others, because almost all aspects and stages of elections in this country have criminal sanctions. Moreover, the criminal sanctions for violations of elections are not only related to the participants of the elections but also to the election officers, officials, and even the police and military officers.

Election offences are stipulated in the *Omnibus Elections Code of the Philippines*, i.e., in Chapter XXII, with the following arrangements. In section 261 (a) to 261 (x), there are 24 election offences which are related to vote-buying and vote-selling, conspiracy to bribe voters, wagering upon result of elections, coercion of subordinates, threats, intimidation, terrorism, use of fraudulent device or other forms of coercion, coercion of election officials and employees, appointment of new employees, creation of new position, promotion, or giving salary increases and transfer of officers and employees in the civil service, as well as intervention of public officers and employees.

The above mentioned offences are also related to the undue influence, unlawful electioneering, prohibition against dismissal of employees, labourers, or tenants, appointment or use of special policemen, special agents, confidential agents or the like, illegal release of prisoners before and after elections, use of public funds, money deposited in trust, and equipment, facilities owned or controlled by the government for an election campaign.

Furthermore, that section also regulates matters related to the usage of weapons, i.e., deadly weapons, carrying firearms outside residence or place of business, use of armoured land, water or air craft, wearing of uniforms and bearing arms, policemen and provincial guards acting as bodyguards or security guards, organisation or maintenance of reaction forces, strike forces, or

other similar forces, prohibition against release, disbursement or expenditure of public funds, prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices, and suspension of elective provincial, city, municipal or *barangay* officers.<sup>35</sup>

In section 261 (y) (1) to (17), there are 17 election offences which are specifically related to the registration of voter stage, such as:<sup>36</sup>

- a. fails without justifiable excuse to register as a voter,
- b. makes any false or untruthful statement,
- c. deliberately imprints or causes the imprinting of blurred or indistinct fingerprints on any copies from the application of registration from member of the board of elections inspectors who approves any application which shows that the applicant does not possess all the qualifications,
- d. registers without filing an application for cancellation of his previous registration,
- e. registers in substitution for another, tampers with or changes without authority any data,
- f. falsely certifies or identifies another as a bona fide resident of a particular place or locality, and uses the voter's affidavit to register,
- g. delivers, hands over, entrusts, gives, directly or indirectly his voter's affidavit to another in consideration of money or other benefit.

In section 261 (z) (1) to (24), there are 24 election offences which are specifically related to the voting stage such as:

- a. fails to cast his vote without justifiable excuse,
- b. votes more than once in the same election,

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<sup>35</sup> See in more detail at the Appendix.

<sup>36</sup> See in more detail at the Appendix.

- c. votes in substitution for another, not being illiterate or physically disabled, allows his ballot to be prepared by another,
- d. avails himself of any means of scheme to discover the contents of the ballot of a voter,
- e. uses a ballot other than the one given by the board of elections inspectors,
- f. places under arrest or detains a voter without lawful cause, or molests him in such a manner as to obstruct or prevent him from going to the polling place to cast his vote,
- g. deliberately omits to read the vote duly written on the ballot, member of a board of elections inspectors who has made possible the casting of more votes, and knowingly uses ballots other than the official ballots.

In section 261 (aa) (1) to (4) and section 261 (bb) (1) to (5), there are nine election offences, which are specifically related to the canvassing stage. Section 261 (bb) (1) to (5) is related to all boards of elections inspectors and boards of canvassers. This section mostly regulates violations committed by the chairperson of the board of canvassers and member of the board of canvassers.

In section 261 (cc) (1) - (6), there are six election offences which are specifically related to the candidacy and campaign stage, which regulates, among others, offences concerning holding political conventions or meetings to nominate its official candidates earlier, abstracts, destroys or cancels any certificate of candidacy, misleads the board of elections inspectors by submitting any false or spurious certificate of candidacy, obstructs or interferes with a radio or television broadcast of any lawful political program, and solicits votes or undertakes any propaganda, on the day of elections, for or against any candidate or any political party.

Section 261 (dd) (1) to (5) contains other five election offences which are not covered above such as sells, furnishes, offers, buys, serves or takes intoxicating liquor on the days fixed by law for the registration of voters in the polling place, or on the day before the elections or on election day, opens in any polling place or within a radius of thirty meters thereof on elections day and during the counting of votes, booths or stalls of any kind for the sale, dispensing or display of wares, merchandise or refreshments, whether solid or liquid, or for any other purposes, and prohibition against discrimination in the sale of air time.

Apart from the above-mentioned election offences, almost all aspects of all elections stages in the Philippines are provided with criminal provisions. Section 262 regulates other elections offences, i.e., offences in the form of violation over several provisions in the *Omnibus Elections Code* of the Philippines, with 92 offences.<sup>37</sup> There are 177 offences if the entire election offences contained in the *Omnibus Elections Code of the Philippines* are added up.

Observing the legal framework of elections in the Philippines, it has elaborated on the punishments for certain violations of law.<sup>38</sup> The legal framework in this country has attempted to ensure that the fairness of elections requires a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures included provisions for outlawing and punishing corrupt practices. The legal framework on elections in the Philippines (especially the *Omnibus Elections Code*) has attempted to protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices.

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<sup>37</sup> section 262 states that Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute elections offences: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240. See in more detail at the Appendix.

<sup>38</sup> International IDEA, (2002), loc.cit.

It can be said that in accordance with international electoral standards, the stipulation regarding election offences in the Philippines is broadly covered. It even stipulates matters which can affect the implementation of election, for example, coercion of election officials and employees, appointment of new employees, creation of new positions, promotion, or giving salary increases and transfer of officers and employees in the civil service and intervention of public officers and employees, dismissal of employees, labourers, or tenants, appointment or use of special policemen, special agents, confidential agents or similar ones, illegal release of prisoners before and after elections, etc.

The core of all election offences is that the stipulation of election offences in the Philippines protects each aspect, which according to the international standards must be protected, for example, the registration of voters, the confidentiality of the voters, the freedom in voting, the prohibition of intimidation, manipulation, etc. One specific matter is that political parties can be the subject of election offences and can be sanctioned. This provision is very appropriate on two grounds. First, in modern criminal laws, corporations have long been accepted as the subject of criminal action; second, sometimes election offences result from party's official decision, therefore, it is reasonable if the party is sanctioned instead of the individual.

After describing the scope of election offences in Malaysia, Singapore, and the Philippines, comparison with that of Indonesia follows.

#### **4.7 Comparison of Election Offences Scope**

According to *Law Number 12 of 2003*, election offences cover various election offences such as the registration of voters and election participants, the election campaign, the voting and

counting of votes, up to the post voting and counting of votes stage which is also sensitive to fraud.

In total, Indonesian legal framework recognizes 31 election-offences.<sup>39</sup> While Malaysia's *Election Offences Act 1954* defines 68 election offences, Singapore identifies 55 election offences, and the Philippines discerns 177 election offences.

From the description above, it is obvious that many fraudulent aspects in the elections – which are prohibited and punishable by criminal sanctions in other countries – are not prohibited in Indonesia. Observed from the quantity point of view, election offences in Indonesia are not sufficiently identified. The shortages of the account of election offences are often exploited by various parties which afterward manage to elude the rules of the election law. The cases of mass rallies for various reasons (e.g. marching, celebration of a party's anniversary) occurring beyond the campaign period, for example, are not considered as violation by most police officers, district attorneys or courts. The other unacceptable conduct that is not criminalized under Indonesian election laws is treating. In other countries, such a conduct is regarded as an offence.

Election offences in Indonesia are only aimed at individual offenders, therefore, corporations or political parties are not subject to election offences. This might prove problematic in cases such as money politics, which is practiced in obedience to the instructions or the policy of a political party to its officers or members. In this case, the one being sanctioned is the individual offender; while the relevant political party walks away free. According to *Law No. 12 of 2003*, if a person is convicted in a money politics case, his candidacy will be cancelled. In consequence only such candidate will be cancelled while his seat will be given to the

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<sup>39</sup> In the new legislation, *Law Number 10 of 2008*, the number of election offences is increased to 51 offences, mostly related to official misfeasance.



subsequent candidate from this fraudulent political party. This is certainly not fair since this violation was on the initiative of the relevant political party.

Thus, it is highly crucial that the Indonesian legal framework should be strengthened with additional provisions prohibiting all inappropriate behaviours in an election process. This criminalization is important to establish effective prevention to protect the democratic process. The basis of such criminalization can be obtained by conducting a comparative study and empirical study toward the effectiveness of the existing provisions. Based on *Panwaslu's* Final Report<sup>40</sup> which described many violations committed by political parties and candidates, it is important to "close" all potential loop holes that can be used by those parties and candidates.

The other important thing to note is that the number of election offences in a legal framework will not create a democratic atmosphere if those provisions are not effectively enforced by electoral management bodies and law enforcement agencies. In Indonesia, even though there are weaknesses in the election offence provisions, the law enforcement process toward the offences is quite fair and effective. The convicted offenders are from various political parties, including the ruling party. This situation of convicted offenders from the ruling party never happened in New Order period.

That condition is quite a contrast to that of Singapore. Though provisions concerning election offence are sufficient but in practice it is still regarded as unfair and in favour of the ruling party. In this regard, the creation of fair and just political situation should be emphasized, instead of only increasing the number of election offences.

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<sup>40</sup> Panitia Pengawas Pemilu [General Election Supervisory Committee], *Laporan Pengawasan Pemilu DPR, DPD, DPRD* [Final Report of 2004 General Elections for Member of DPR, DPD, and DPRD Supervising], Vol. 1-7, (Jakarta: Panitia Pengawas Pemilu, 2004).

#### 4.8 Corrupt Practice of Bribery

In this sub-chapter, one type of election offence, which frequently attracts public attention and is considered dangerous for the democratic process, i.e., bribery or corruption<sup>41</sup> is discussed. The effort to overcome corruption has become the central theme in this region, including in Indonesia, Malaysia, Singapore, and the Philippines.

Related to the democratic process, in Indonesia these offences are called money politics or "*politik uang*." This conduct, both in Malaysia and Singapore, is categorised into corrupt practices. The term corrupt practice has no standard meaning which can be applied uniformly to all the statutes dealing with the subject. The practices, which are called corrupt practices, have been declared illegal by many countries since the 19<sup>th</sup> century because they influence the utilisation of the right to vote.

Political scientists have long formulated and agreed that political authority is derived from five sources: physical strength, power, charisma, science and technology, and money or economic strength. Holding the fifth source, someone or a group of people can buy and control many things, including acquiring power.<sup>42</sup>

In an election, citizens surrender part of their individual sovereignty to such persons whom they elect to sit in the representative institutions. In periodic elections, the citizens can continuously control their representatives. If they consider that such sovereignty has been

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<sup>41</sup> Bribery, in West Africa, is known as dash; in Latin America, *la mordida* ("the bite"); in Italy, *la bustarella* ("the little envelope"); in France, *pot de vin*; in the United States, "grease." Under whatever name, bribery is a universal phenomenon with roots that stretch far back into human history. The Code of *Hammurabi*, created by the king who founded the first Babylonian empire almost four thousand years ago, held that if a man was bribed to give false witness against another, he must bear the penalty imposed in the case. An edict by one Egyptian Pharaoh proclaimed the death penalty for any official or priest who accepted a bribe for the performance of his judicial duties. Coleman, James William, *The Criminal Elite – The Sociology of White Collar Crime*, (New York: St. Martin Press, 1989) at 47.

<sup>42</sup> This means, the wealth does not automatically generate political authority, if it is not used to influence the political process. Hermawan Sulistyono and A. Kadar, *Uang & Kekuasaan dalam Pemilu 1999* [Money & Power on 1999 General Elections], (Jakarta: KIPP Indonesia, 2000) at 1-4.

abused, they will revoke such sovereignty in the succeeding elections to be delivered to other representatives. Based on this notion, the utilisation of money in the elections should be arranged in a manner which would not violate the principle of democracy. One of the rules related to this is the prohibition to commit bribery in the elections law or in the election offences law.<sup>43</sup>

Democracy is a system of government which expresses the will of the people. In theory, since all persons and groups have a right to select their candidates from their party, hopefully all interests and points of view will be represented. In practice however, wealthy individuals and large organisations provide money and have the greatest influence on the political process.<sup>44</sup>

The literary meaning of the term bribery is wider than the legal meaning. Therefore, both the literary and legal meaning does not exactly correspond with each other. According to a dictionary, the meaning of the word 'corrupt' is "willing to act dishonestly in return for money," "evil or immoral."<sup>45</sup> The term 'practice' means, "the action of doing something," the usual way of doing something."<sup>46</sup> Thus, corrupt practice means the action of doing an act dishonestly, evil or immoral in elections. However, not all types of evil or dishonest practice necessarily mean corrupt practice within legislation.

The scope of corrupt practices also cover more aspects, such as, the size of expenditure, contribution and the specification of purposes on which the money could be spent. In the United States of America, the term corrupt practices can be found in, for example, the *Corrupt Practices Act of 1925*. While in Britain, this term can be found in the *Corrupt and Illegal Practices*

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<sup>43</sup> Bribery is not only considered dangerous for the process of democracy but also dangerous for a nation (not always in the context of political process). Bribery is a part of corruption. Corruption is so dangerous that historians state that the bankruptcy of VOC in the *Netherlands Indie* was caused by corruption. All the same with political and economic experts who analyze that the severe economic crisis which struck Indonesia in 1997/1998 is also caused by corruption which has spread to many sectors this country. Not surprisingly that one of the demand of reformation in Indonesia is to destroy KKN (*Korupsi-Kolusi-Nepotisme/Corruption, Collusion and Nepotism*).

<sup>44</sup> Simon, David R and D. Stanley Eitzen, *Elite Deviance*, 4th ed, (Boston: Allyn and Bacon: 1993) at 241-242.

<sup>45</sup> Oxford Dictionary of Current English, Fourth Edition, (Oxford: Oxford University Press, 2006), at 196.

<sup>46</sup> Id at 704.

*Prevention Act 1883*. According to the *Corrupt and Illegal Practices Act 1883*, the corrupt practices cover: (1) bribery, (2) treating, (3) undue influence, (4) personation, and (5) unauthorised expenditure. While, other fraud, such as, paid conveyancing, advertising, hiring without authority committee rooms, voting without qualification, etc., are included in the category of illegal practices.<sup>47</sup>

Corruption in the electoral process is a breach of public trust and an illegal act. Enforcing the legal framework is essential to maintain electoral integrity. Without enforcement, the best legal framework or electoral systems can be bypassed or ignored. Corruption is a crime of calculation, not a crime of passion. When the amount of bribery is large, the chance of being caught is small, and the penalty if caught is insufficient, many officials will succumb.

In Britain, bribery and the offence of "treating" are punishable as corrupt practices. A person who is found guilty of a corrupt practice will be held liable on conviction of indictment up to one year in prison, a fine, or both. In Japan, the *Public Office Elections Law* (1996 revision) invalidates elections results if campaign managers, campaign accountants, secretaries of the candidate, or the prospective candidate was convicted of vote buying and punished with a fine or heavier penalty. In addition, the candidate will be banned from becoming a candidate or holding public office in the same electoral district for five years.

*Black's Law Dictionary* provides the definition of bribery as follows:<sup>48</sup> (i) The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties; (ii) The corrupt tendering or receiving of a price for official action; (iii) The receiving of offering any undue reward by or to any person concerned in the administration of public justice or a public officer to influence his

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<sup>47</sup> Jhingta, op.cit., 1-2.

<sup>48</sup> Black, op.cit., 191.

behaviour in office. Any gift, advantage, or emolument offered, given, or promised to, or asked or accepted by, any public officer to influence his behaviour in office; (iv) Any direct or indirect action to give, promise or offer anything of value to a public official or witness, or an official's or witness' solicitation of something of value. Meanwhile, according to the Indian Penal Code, bribery is defined as:<sup>49</sup>

(i) Gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of bribery"; (ii) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification; (iii) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a motive for doing what he has not done, shall be deemed to have accepted the gratification as a reward."

Bribery is related to the elections process. Concerning this matter, *Black's Law Dictionary* explains as follow:

"The offence committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting, or as a reward to the voter for having voted in a particular way or abstain from voting."<sup>50</sup>

Based on the above mentioned definitions, several characteristics of bribery can be identified: (i) committed by the one who gives or promises or offers money or any valuable inducement to an elector; or (ii) in order to corruptly induce another to vote in a particular way; or (iii) to abstain from voting; or (iv) as a reward to the voter for having voted in a particular way or abstain from voting.

<sup>49</sup> *Indian Penal Code* section 171-B.

<sup>50</sup> *Black*, loc.cit.

Comparison of bribery arrangement according to the elections laws in Indonesia, Malaysia, Singapore, and the Philippines can be summarised in the following table:

**Table 4.2**  
**Bribery Arrangement in Four Countries**

	Indonesia	Malaysia	Singapore	The Philippines
Law	<i>Law No. 12 of 2003</i>	<i>Election Offences Act 1954</i>	<i>Parliamentary Elections Act</i>	<i>Omnibus Elections Code of the Philippines</i>
Section	139 (2)	10 (a) - 10 (i)	61 (a) – 61 (j)	261 (a) (1) and (2) and 261 (b)
Number of Bribery Offences	1	9	10	3
Sanctions	Imprisonment of 2 - 12 months and/or fine of Rp1,000,000.00 to Rp10,000,000.00	Imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit.	(i) a fine of not less than \$250 and not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both; and (ii) in any other case, to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.	imprisonment of not less than one year but not more than six years and shall not be subject to probation; political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos
Incapacity	----	Become incapable of being registered or listed as an elector or of voting at any elections or of being elected at any elections	become incapable for a period of 7 years from the date of his conviction of being registered as an elector or of voting at any elections under this Act or of being elected as the President or a Member of Parliament	disqualification to hold public office and deprivation of the right of suffrage

In Indonesia, there has been no development on bribery provision in the election process. From 1955 to 2004 General Elections, there is only one very brief provision that cannot cover various *modus operandi* of bribery. It is questionable, since bribery is the only offence which entails disqualification consequence committed by a candidate in *Law No. 12 of 2003*. Even though there were bribery scandals reported to *Panwaslu* during the 2004 General Elections, there was no candidate convicted and then disqualified. The bribery cases are mostly committed by political party supporters.<sup>51</sup> This is due to the fact that the bribery provision is very brief and its coverage is very narrow.

#### **4.9 Comparison and Future Directions**

It is submitted that the arrangement of bribery in Indonesia is very brief compared to its arrangement in Malaysia, Singapore, and the Philippines. Consequently the law enforcement agency has difficulty in dealing with the problems. As a description, the only one election offence stipulated in section 139 (2) will be used and will be compared with other provision, which is the most similar among the three countries. It can be perceived that it has the narrowest scope. For clarity, it is presented in the following table.

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<sup>51</sup> This issue is discussed in chapter five.

**Table 4.3**  
**Comparison of Elements of One Type of Bribery in four Countries**

<b>Indonesia</b>	<b>Malaysia</b>	<b>Singapore</b>	<b>The Philippines</b>
<i>Law No. 12 of 2003</i>	<i>Election Offences Act 1954</i>	<i>Parliamentary Elections Act</i>	<i>Omnibus Elections Code of the Philippines</i>
<b>Section 139 (2)</b>	<b>Section 10 (a)</b>	<b>Section 61 (a)</b>	<b>Section 261 (a) (1)</b>
<p>(i) Any one  (ii) deliberately  (iii) gives or promises money or other material  (iv) to any one  (v) in order to not use his voting right, or to choose certain elections participant, or to use his voting right in a certain manner therefore the ballot becomes invalid.”</p>	<p>i) every person  ii) who directly or indirectly,  iii) by himself or by any other person on his behalf,  iv) gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure any money or valuable consideration  v) to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person,  vi) in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any elections</p>	<p>i) every person  ii) who, directly or indirectly,  iii) by himself or by any other person on his behalf,  iv) gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure any money or valuable consideration  v) to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person,  vi) in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act on account of that elector or voter having voted or refrained from voting at any elections under this Act.</p>	<p>i) Any person  ii) who gives, offers or promises money or anything of value,  iii) gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure,  iv) directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community  v) in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the elections, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.</p>



By comparing the provision, it is inferred that the provision regarding bribery in Malaysia, Singapore and the Philippines address more illegal conducts of bribery, than that in Indonesia. Compared to other countries, the arrangement of bribery in the general election laws in Indonesia is insufficient since there is only one briefly stipulated offence, while in Malaysia it is stipulated in nine offences, in Singapore 10 offences, and in the Philippines three offences. Although there are only three bribery offences in the Philippines, their formulations are broad enough and cover many bribery actions in the election.

In Indonesia, out of 31 election offences stipulated in *Law Number 12 of 2003*, apparently only one election offence can be classified as bribery, i.e., as stipulated in section 139 (2). Observing the formulation of section 139 (2), it is obvious that bribery can occur at all stages of election (not only in the voting stage). However, this regulation does not specify concerning anyone who gives money or material consideration after the voting.

Giving money, goods and other matters for various reasons (donation for school, transportation allowances for campaigning, gifts, door prize, etc.) without being accompanied by explicit enticements to vote for anyone is not punishable. The involvement of many government employees and heads of villages in the campaign as invitees is difficult to be used as a ground to punish the inviting party due to the reason that they are present by their own will.

In accordance with the principle of honest and fair elections, a lot of things are not regulated and not punishable, which gives rise to rampant fraudulent practices. Certainly, there are many parties criticising this deviating behaviour as violation of political ethics or campaign ethics, however this is not at all heeded since according to the violators, to the extent there is no explicit punishment in the law, then anyone is free to commit such actions.

From 31 election-offences stipulated in the *Law Number 12 of 2003*, it turns out that there is only one election offence which can be classified as bribery stipulated in section 139 (2). However, bribery can occur at any elections stages (not merely voting stage). It is not considered bribery if someone gives money or goods of value, after the holding of voting (different from the definition in *Black's Law Dictionary*). Section 139 (2) states:

“Anyone who deliberately gives or promises to give any money or other material to anyone else in order to not use the voting right, or to choose certain elections participant, or to use the voting right in a certain manner therefore the ballot becomes invalid.”

The criminal sanction to bribery in this law is imprisonment for at least two months or at the most 12 months and/or a fine of at least Rp. 1,000,000.00 (one million Rupiah) or at the most Rp. 10,000,000.00 (ten million Rupiah).

With respect to its development, there is in fact no development concerning stipulation of bribery in Indonesian law. In fact, what really happened is the lack of rules. Before the existence of the elections law, the *Indonesian Criminal Code* has already stipulated bribery in the elections, i.e., as can be seen in section 149 of the KUHP, which states:

“(1) Any person who on the occasion of an election held by virtue of a general regulation by gift or promise bribes somebody either not to exercise his franchise or to exercise it in a certain manner, shall be punished by a maximum imprisonment of nine months or a maximum fine of three hundred Rupiah.

(2) The same punishment shall apply to the elector who by gift or promise allows himself to be bribed to exercise or not exercise his above mentioned rights.”

According to the above section, it is not only the person committing bribery that will be imposed with criminal sanction, but the person receiving bribery can also be imposed with criminal sanction. The same provision can also be found in the first elections law, i.e., *Law No. 7*

of 1953. The substance and wording of the offence stipulated in section 120 of *Law No. 7 of 1953* are similar to those in section 149 of KUHP.<sup>52</sup>

The elections law during the New Order period, i.e., *Law No. 15 of 1969*,<sup>53</sup> is also very similar in way it stipulates bribery. Also, *Law No. 3 of 1999* is basically the same as the previous rules. According to section 73 (3) *Law No.3 of 1999*, both bribing and receiving bribe can be punished.<sup>54</sup> However, the term of punishment is reduced from five years to only three years in prison.

In Malaysia, bribery is clearly categorised as corrupt practices. Different from *Indonesian Elections Law (Law No. 12 of 2003)* which only recognises one type of bribery, there are nine election offences of bribery in the *Election Offences Act 1954*, i.e., as stipulated in section 10 (a) to section 10 (i).<sup>55</sup> The sanction for bribery is imprisonment for a term not exceeding two years and to a fine of not less than 1000 (one thousand) Ringgit and not more than 5000 (five thousand) Ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding 2000 (two thousand) Ringgit.<sup>56</sup>

In addition to the above-mentioned sanctions, section 11 (2) *Election Offences Act 1954* affirms that incapacities for any one proven of having committed corrupt practices, i.e., “become incapable of being registered or listed as an elector or of voting at any elections or of being elected at any elections...”

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<sup>52</sup> The obvious difference between those two are in the criminal sanction matter. The criminal sanction in section 149 of KUHP is only at the maximum nine months of imprisonment or a fine of at the most four thousand five hundred rupiah, while section 120 of *Law No.7 of 1953* contains a much severe sanction, i.e., five years imprisonment.

<sup>53</sup> As amended by *Law No. 4 of 1975*, *Law No. 2 of 1980*, and *Law No. 1 of 1985*

<sup>54</sup> “Whomsoever at the time of the polling according to this law bribes a person by giving a present or promise in order not to use his right to vote or to vote in a certain way, will be imprisoned for three years maximally. The punishment also applies to the voter who by accepting bribes in the form of a present or promise commits a certain act.”

<sup>55</sup> See in more detail at appendix.

<sup>56</sup> *Election Offences Act 1954* section 11.

Having nine types of bribery pertaining to elections, it can be stated that the scope of bribery in Malaysia is much broader and defined in more detail compared to bribery in the Indonesian election legal framework. According to the provision of section 10 *Election Offences Act 1954*, the sanction can be imposed both to the giver of bribe and to the receiver of bribe. Section 10 (a) *Election Offences Act 1954*, for example, referring to the giver of bribe, i.e., person who “gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter...”, while section 10 (d) is relating to the person receiving or accepting bribe: “every person who upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the elections of any person, or the vote of any elector or voter at an election.”

Recognizing this broad scope, bribery covers not only money but also “valuable consideration”. This will thus include “promise to excuse rent,” “giving additional benefits on a lease when the landlord is a candidate,” or even “paying for a holiday.”<sup>57</sup> The sanction of bribery can also be imposed on any one who directly or indirectly gives bribe or receives bribe, i.e., with the elements of “directly or indirectly, by himself or by any other person on his behalf” which are contained in sections 10 (a), 10 (b), 10 (c), 10 (g), 10 (h), and 10 (i) *Election Offences Act 1954*.

In Indonesia, implicitly, bribery is committed before voting, while in Malaysia, such bribery can be committed before or after voting, therefore anyone who receives a gift after he had voted for a certain candidate, he/she shall be punished for bribery. The last sentence of section 10 (a) *Election Offences Act 1954* states: “or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any elections”.

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<sup>57</sup> Rachagan, op.cit., 150.

Similarly, section 10 (g) *Election Offences Act 1954* states that: “every person who directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such elections.” This is the same as the definition of bribery in elections found in *Black's Law Dictionary*.

With much higher number of election offences in the form of bribery, its scope is also much broader (compared to bribery in Indonesian elections law). Section 10 (e) *Election Offences Act 1954*, for example, contains one of the types of bribery. This section contains the following elements: (i) every person who; (ii) advances or pays or causes to be paid any money to, or to the use; (iii) any other person with the intent that such money or any part thereof shall be expended in bribery at any elections; (iv) or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such elections.

It is similar to section 10 (f) *Election Offences Act 1954* which contains the following elements: (i) every elector or voter who; (ii) before or during any elections; (iii) directly or indirectly; (iv) by himself or by any other person on his behalf; (v) receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment; (vi) for himself or for any other person; (vii) for voting or agreeing to vote or refraining or agreeing to refrain from voting at any such elections.

Similar to *Election Offences Act 1954* in Malaysia, the *Parliamentary Elections Act of Singapore* also clearly inserts this bribery as corrupt practices. According to section 61 of this Act, the sanction for this offence is a fine of not less than \$250 (two hundred fifty Singapore Dollars) and not exceeding \$1,000 (one thousand Singapore Dollars) or imprisonment for a term

not exceeding 12 months or to both; and (ii) in any other case, to a fine not exceeding \$500 (five hundred Singapore Dollars) or imprisonment for a term not exceeding six months or to both.

In addition to the criminal sanction, it is also added by incapacities, i.e., becoming incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any elections under this act or of being elected as President or a member of parliament.

The entire bribery offences according to this Singaporean law are 10 offences, differing in one offence only from Malaysian law, which has nine offences. There is almost no difference between bribery according to the *Election Offences Act 1954* and bribery according to the *Parliamentary Elections Act*, of Singapore, except for one additional offence, i.e., the existence of section 60 (d), i.e., assisting or has promised to assist a candidate at an election to induce that person to refrain from assisting that candidate. Except for merely different wordings, all the rest are the same. Below is the table of comparison of the bribery arrangements in Malaysia and in Singapore.

**Table 4.4**  
**Arrangement of Bribery in Malaysia and Singapore**

No	Content	<i>Malaysia Election Offences Act 1954</i>	<i>Singapore Parliamentary Elections Act</i>
1	gives, lends, agrees to gives/lends, offers, promises, procure any money or valuable consideration	Sec 10 (a)	Sec 61 (a)
2	gives, lends, agrees to gives/lends, offers, promises, procure any office, place or employment	Sec 10 (b)	Sec 61 (b)
3	makes any gift, loan, promise, procurement	Sec 10 (c)	Sec 61 (c)
4	makes any such gift, loan, offer, promise, procurement or agreement to or for any person who is assisting or has promised to assist a candidate at an election to induce that person to refrain from assisting that candidate;	-----	Sec 61 (d)

5	in consequence, procures or engages , promises or endeavours to procure, the election, or the vote	Sec 10 (d)	Sec 61 (e)
6	advances or pays	Sec 10 (e)	Sec 61 (f)
7	before or during an election , elector, voter receives, agrees, or contracts for any money, gift, loan, office, place, employment for voting	Sec 10 (f)	Sec 61 (g)
8	after an election, receives money on account of any person having voted	Sec 10 (g)	Sec 61 (h)
9	after an election, on account of and as payment for voting or for having voted	Sec 10 (h)	Sec 61 (i)
10	before or during an election in order to induce other person to agree to be nominated as a candidate or to refrain from being candidate , gives or procures office, place, employment, money	Sec 10 (i)	Sec 61 (j)

In the Philippines, although there is a large number of election offences, i.e., 177 election offences, the number of bribery offences is relatively small. In this country, bribery is limited to vote buying and vote selling. Different from the arrangement of bribery in Malaysia and Singapore in which bribery is stipulated in detail in many forms and manners, in the *Omnibus Elections Code* of the Philippines, the bribery offences are only three types as stipulated in the section 261 (a) (1) and (2) and section 261 (b). The sanction for bribery is stipulated in section 264, which states:

“Any person found guilty of any election offences under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty”.

In section 261 (a), there are two bribery offences, i.e.:

(1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or

the public in general to vote for or against any candidate or withhold his vote in the elections, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party; and  
(2) Any person, association, corporation, group or community who solicits or receives, directly or indirectly, any expenditure or promise of any office or employment, public or private, for any of the foregoing considerations.

While section 261 (b) states: “Two or more persons, whether candidates or not, who come to an agreement concerning the commission of any violation of paragraph (a) of this section and decide to commit it.”

Although there are only three bribery offences, the above-mentioned provisions covers various manners and forms of bribery, including bribing or being bribed, gives, offers or promises money or anything of value, gives or promises any office or employment, franchises or grants, public or private, or makes or offers to make an expenditure.

Identical to Malaysia and Singapore, this provision also contains the element of “directly or indirectly.” The object of such bribery is not limited to an individual but also the public in general who “induce anyone or the public in general.” Moreover, based on section 264, the differences from the other three countries can be distinguished. In the Philippines, political parties must account for offences committed and when found guilty, are punished with criminal sanction in the form of a fine.

In the Philippines, according to Frederic Charles Schaffer,<sup>58</sup> an estimated three million people nationwide were offered some form of payment in the 2002 *barangay* (community-level) elections about seven per cent of all voting aged adults.<sup>59</sup> The total sum of money spent by candidates on buying votes can be high. One congressional candidate in the Southern Luzon

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<sup>58</sup> Schaffer, Frederic Charles, *Clean Elections and the Great Unwashed: Vote Buying and Voter Education in the Philippines*, April 2005, Paper Number 21, Unpublished by Frederic Charles Schaffer.

<sup>59</sup> *Ibid.*



region of the Philippines, for example, admitted to doling out 4 million pesos (US \$160,000) to voters on the eve of the 1992 elections.<sup>60</sup>

Vote buying in the Philippines has institutional causes, the weakness of parties in the Philippines. As a result, candidates (and their factional or party backers) have strong incentives to build personalised networks of support. Key players in the construction of these networks are 'vote brokers', known as *liders* (leaders) in the Philippines. Traditions of gift giving and benevolence make the distribution of money and goods a preferred method of building personal networks. As such, vote buying is often less an explicit contract (as 'buying' might erroneously imply) than a form of gift giving intended to demonstrate a candidate's compassion, good will or respect.<sup>61</sup>

With respect to the problem of vote buying, in the May 2001 Elections, *Comelec* has disqualified all the elected officials of Panitan town, Capiz, finding them guilty of vote-buying and harassment. The *Comelec* affirmed the ruling of the first division that ordered the disqualification of the proclamation of Mayor Roberto Albana, Vice-Mayor Katherin Dequina and eight councillors for election offences.<sup>62</sup>

#### 4.10 Two Issues in Bribery

There are two interesting issues related to electoral bribery, namely: 1) whether distribution *per se* of money during electoral process is regarded as bribery, 2) whether promise to give money constitute bribery.

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<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> Felipe Celino, Capiz Elections Case Ruling Comes Three Years After Polls [http://www.inq7.net/reg/2004/jun/10/reg\\_4-1.htm](http://www.inq7.net/reg/2004/jun/10/reg_4-1.htm), September 15, 2005.

#### 4.10.1 Distribution of Money

Observed from the criminal element as mentioned in the election laws,<sup>63</sup> it is bribery if the money is given with illegitimate motive of influencing or inducing the voters in a particular constituency to vote for the respondent. The problem is how “illegitimate motive of influencing or inducing the voters” is committed. Whether the distribution of money should be accompanied by clear and explicit words that the receiver should vote for certain political party or candidate? In this issue, the case of *Mursin bin Laini @ Matdin v Datuk Fred Sinidol*, the case of *Wong Sing Nang v Tiong Thai King* and the case of *Sri Mulyanto* share the same consideration.

In *Mursin bin Laini @ Matdin v Datuk Fred Sinidol*, the legal issue is whether the distribution *per se* of money during an election period is evidence that general or individual bribery had been committed. In this case, the judge held that distribution *per se* of money before and during election period is not evidence that general or individual bribery had been committed. The commission of such offence depends on what had taken place e.g. what was said and done during the distribution.<sup>64</sup>

Actions of bribery must be proved to be committed “in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting.” If this element was not proven, the bribery accusation will fail, as occurred in the case of *Wong Sing Nang v Tiong Thai King*.<sup>65</sup>

The facts of *Wong Sing Nang v Tiong Thai King* case was that the petitioner alleged that the respondent had, in the course of his election campaign, committed bribery as defined under s10(a) and 32(a) of the *Election Offences Act 1954* and corrupt practice under s 32(c) of the Act.

<sup>63</sup> Such as Indonesia's *Law No. 12 of 2003* and Malaysia's *Election Offences Act 1954*.

<sup>64</sup> Tunku Sofiah Jewa, *Malaysian Election Laws*, Volume II, (Kuala Lumpur: Pacifica Publications, 2003) at 734-842.

<sup>65</sup> [1996] 1 AMR

According to the petitioner, a few days before the polling date, the respondent had handed his personal donation in cheque for 200,000 (two thousand) Ringgit in favour of the United Association of Private Chinese Secondary School Boards Management, Sibuluan to its chairman, LSN. This was allegedly to induce the voters of Lanang to vote for him. The respondent on the other hand said that the donation was given as an advance on behalf of his company.<sup>66</sup>

The legal issue in that case is whether the donation was a personal donation of the respondent and was given with the illegitimate motive of influencing or inducing the voters in the Lanang constituency to vote for the respondent. The decision of the judge was that the petitioner had failed to prove that the donation was a personal donation and that it was given with the illegitimate motive of influencing or inducing the voters in the Lanang constituency to vote for the respondent.<sup>67</sup>

Similar cases have happened quite frequently in Indonesia, before or during the campaign period. Unfortunately the cases have not been taken to the court as bribery cases. Some candidates or political parties normally distribute their donation to *pesantren*<sup>68</sup> or schools before or during campaign period stating that the distribution of donation has nothing to do with the elections, just regular donation like that in any other month. The fact that he or she does not directly or in clear language ask the receiver to vote for him/her or his/her political party while giving the donation has made it difficult for the law enforcers to take it to the court as bribery case.

In *Sri Mulyanto case*, the judges stated that the defendant was not found guilty because “the defendant did not state any request or suggestion to vote.” To consider donation as bribery in general elections there must exist the element of giving or promising (in any form whatsoever)

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<sup>66</sup> [1996] 1 AMR, at 1044-1054.

<sup>67</sup> *Ibid.*

<sup>68</sup> Islamic boarding school

by suggesting or with the intention to persuade anyone in order to not exercise his right to vote or in order to make him exercise his right in a determined manner.

The chronology of events in *Sri Mulyanto case*<sup>69</sup> was as follows. On May 22, 1999, a campaign person of Golkar party Sri Mulyanto had a briefing session with campaign audiences at sub District Sambu. The briefing was then followed by a demonstration to vote for Golkar party's symbol carried out by campaign staff and some of the campaign participants, namely Tumiyati, Suwarso and Jamari. All of them identified themselves as Golkar members. After this demonstration, Sri Mulyanto gave Rp10,000 to Tumiyati, Suwarno and Jamari.

In this case the legal issue is whether giving money after the receiver demonstrated a voting for a political party in the election campaign meeting is considered as bribery. Boyolali District Court held that the elements of offences in section 73 (3) of *Law Number 3 of 1999* were not proven and released the defendant Sri Mulyanto from the accusation of bribery in the general elections. The important element to be proved is "by giving or promising to give bribe to any one."

The judge consideration in those three cases were different from that of *Abu Seman v Public Prosecutor*,<sup>70</sup> *Charis Widyarso* and *Atmo Semito case*. In the last cases, the judges used wider and more liberal interpretation. The conduct is considered as bribery even if the distribution of money is not accompanied by clear words that the receiver should vote for a certain political party or candidate. The bribery is proven if the distribution of money is accompanied by symbols of political party or its candidate. Certain situation (e.g. using political party flags or political party uniform) can also be seen as correlation between the "distribution of money" and the "intention to induce someone to vote for a certain political party or candidate."

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<sup>69</sup> Decision of Boyolali District Court (Central Java Province) No. 155/PID.B/1999/PN.Bi.

<sup>70</sup> [1982] 2 M.L.J. 338.

In the appeal case of *Abu Seman v Public Prosecutor*<sup>71</sup> it was established that it is not necessary that the voter be asked to vote for a party or candidate by name. Sothi Rachagan described it as follows:

“In determining bribery the court will look at the essence of the transaction, whether the act was done with a view to influencing an elector. The intention to bribe can, however, be established from the acts and other circumstances of the case.”<sup>72</sup>

In the case of *Charis Widyarso*<sup>73</sup> the defendant was the chairman of Golkar party in Rembang Municipality. On June 6, 1999 at the last campaign meeting, the defendant gave Rp10,000 to Sumadi, Abdul Kanan, Kasdar and Solikui Hadi. Sumadi assisted by Charis' son, put some money into each of the envelopes followed by a Golkar sticker with a line that ran “thank you for voting for Golkar party” and one sample of ballot paper with an illustration and an arrowhead aiming at Golkar party. Sumadi and Solikui Hadi gave that envelope to Sumardji who thought that it was a gift from Golkar party.

The issue in this case is whether giving money accompanied by a political party's symbol is considered as bribery. Rembang District Court decided that all elements of the offence were proven or fulfilled and declared that the defendant Charis Widyarso was guilty of bribery offence in elections as stipulated in section 73 (3) of *Law Number 3 of 1999*. In *Charis Widyarso case*, the judge of the Rembang District Court stated that the giving or promising in this context “can also be committed through any intermediary” and “do not need to be directly uttered in words, but it can also be committed through textual representation on stickers and ballots. Thus, it is enough to be considered as uttered words if it contains an inducement to vote”.

In this case, even though the defendant did not say any word containing instruction to insert stickers and sample of ballots containing picture of the Golkar Party, “the defendant's

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<sup>71</sup> [1982] 2 M.L.J. 338.

<sup>72</sup> Rachagan, *op.cit.*, 151.

<sup>73</sup> Decision of Rembang District Court (Central Java Province) No. 87/Pid/B/1999/PN.Rbg.

attitude which did not prevent such action” and “did not clear up the political party attributes” were considered fulfilling the element of “by giving or promising to bribe.”

The position of the Council of Judges in *Sri Mulyanto case* is different from the position taken by the Council of Judges who tried the *Charis Widyarso case*. In the first case, the element of “by giving or promising to bribe” must have the element of giving or promising (in any form whatsoever) by suggesting or with the intention to persuade anyone in order not to exercise his right to vote or in order to make him exercise his right in a determined manner. According to the Council of Judges on the *case of Sri Mulyanto*, the action of bribery is not fulfilled since in this case: 1) such giving is “spontaneous due to the appreciation for such consistent cadres”; 2) “Golkar Municipality office does not allocate any budget for such matter”; 3) At the time of giving “the defendant did not state any request or suggestion to vote for Golkar Party”; and 4) “the receivers were not influenced with such giving.”

The judge’s position in *Atmo Semito case*<sup>74</sup> was similar to that of *Charis*. In the *case of Atmo Semito* the situation was as follows. On June 1, 1999, Yoso Gino came to Atmo Semito’s house, at Grijo village, sub district Sambu, Boyolali municipality, bringing 15 bags of cement and 10 Golkar party’s symbols on which arrows directed toward them and a caption that runs “My choice.” After the distribution of those things, Atmo Semito attached the Golkar symbol around his house.

In *Charis Widyarso* and *Atmo Semito*, the judges construed that to prove the conduct of bribery does not require exact or clear words of asking someone to vote for a certain political party or candidate on a polling day. It may be proven by giving money or other valuable consideration accompanied by showing symbol or picture or sign which can be interpreted as an inducement to vote certain political party or candidate. This is quite different with *Sri Mulyono*

<sup>74</sup> Decision of Boyolali District Court (Central Java Province) No. 150/Pid.B/1999/PN.Bi

case in which the judge interpreted bribery strictly. The distribution of money should be accompanied by exact or clear words that the receiver was induced to vote for a certain political party or candidate. Without such words, the bribery is not proven.

At least two approaches may be made regarding criminal elements of bribery. First, the narrow or strict interpretation or very normative interpretation which view that election offences should be treated the same as other criminal offences. This means that if the provision states that “the money or promise is given to induce the other person to vote for someone” then this element can be proven in the form of “asking the receiver to vote for him/her in a particular election.” According to this approach, bribery in an election process is treated similar to bribery committed outside the election process. The implication of this approach is that many behaviours intended to induce electors by using “signs” or “symbols” or “vague words” instead of using blatant words, cannot be prosecuted.

The second approach is a wider interpretation which tends to emphasize the intention and motive of an accused person when he/she distributes money or materials to electors. This approach is very close to “crime control model” in the criminal justice system. The goal is to control and eradicate bribery in the election process. Given that bribery may be committed using various *modus operandi* which are sometimes difficult to prove, it is very important to use the wider interpretation to proof certain criminal elements.

The question is which decision is more in accordance with the purpose of the election law. It is submitted that the decision in *Abu Seman v Public Prosecutor*,<sup>75</sup> *Charis Widyarso Case* and *Atmo Semito Case* are more in accordance with the purpose of creating election offence provisions. In hearing and trying an election offence case (such as bribery), a judge should understand the “political sign or language” of a particular conduct. This means that the judge

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<sup>75</sup> [1982] 2 M.L.J. 338.

should aware that there are various means to “hide” bribery with symbols, gestures, pictures, and other “creative” ways.

#### 4.10.2 Promise to Give Contribution

Can a statement that “if a candidate wins, he will give a contribution to the people” be considered as bribery? In the case of *Agus Gunawan Bin Cece Arifin and Muhammad Ali Paksi Bin Marzuki* (in Indonesia) and *Teoh Teik Huat v Lim Kean Siew & Anor* (in Malaysia) the judge held that promise to give contribution if he/she win in the election could be considered as bribery if delivered in clear words about the promise to give money.

In the case of *Agus Gunawan Bin Cece Arifin and Muhammad Ali Paksi Bin Marzuki*, the bribery is proven because the defendants had promised to give part of their income to the people. While in *Teoh Teik Huat v Lim Kean Siew & Anor*, the judge held that the bribery was not proven because the defendant only said “*shall make allocation to bring more development for the benefit of the people in the area*”

In the case of *Agus Gunawan Bin Cece Arifin and Muhammad Ali Paksi Bin Marzuki*<sup>76</sup> those defendants who became the candidates for members of DPRD were accused of making agreement on stamp duty, which contained statement to distribute compensation funds for every month if they were elected as members of the DPRD of the City of Metro. The legal issue in this case is whether or not a promise to give part of his salary to the people if he is elected can be considered as bribery.

The decision of the Judges of the Metro Lampung District Court affirmed that such promise could be considered as bribery as mentioned in the *Law No. 3 of 1999*. The decision of the Judges of the Metro District Court punished the defendants with two months imprisonment,

<sup>76</sup> Decision of Metro Lampung District Court Number: 04/Pid.S/04/2004/PN.M dated May 12, 2004.



six months probationary period, a fine of Rp. 1,000,000 and a subsidiary sanction of two months imprisonment.

In *Teoh Teik Huat v Lim Kean Siew & Aynor*,<sup>77</sup> the petitioner was a voter and the Democratic Action Party unsuccessful candidate in the by-election for the Penang State constituency of Pengkalan Kota. He applied to nullify the elections of the first respondent, a *Barisan Nasional* candidate, who was returned as duly elected, on the sole ground that a corrupt practice under section 32 (e) of the *Election Offences Act 1954* have been committed by Tengku Razaleigh Hamzah, then Minister of Finance. The petitioner claimed that the Minister, in the course of speaking to a crowd of over 1,500 voters in the constituency, had said, "If the *Barisan Nasional* win, I will personally give more money for the improvement of Pengkalan Kota."<sup>78</sup>

The petitioner claimed that the statement must have induced the voters in the constituency to vote for the first respondent in the by-election. In this case, the Judge stated that what the Minister had said, whilst addressing the crowd in his bazaar Malay, was that if the *Barisan Nasional* wins, he would promote projects and development programs for the benefit of the people in the constituency. The statement in question even if it was made, which on the evidence was not, does not amount to bribery within the meaning of section 10 (a) of the *Election offences Act* and it follows that there has been no corrupt practice under section 11.<sup>79</sup>

It is submitted that a promise to give part of candidate's money is bribery. However a promise to improve people quality of live is not bribery. It is a normal political promise to invite

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<sup>77</sup>[Penang – Elections Petition No. 1 of 1981], February 9, 10 & 12, 1981, quoted in Tunku Sofiah Jewa, *Malaysian Election Laws*, Volume II, op.cit., 678-686.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

support of the people. Those two things are different and the judge should be able to distinguish them. The first is bribery, which in simple words is “giving or promise to give money or materials to induce electors to vote particular party or candidate,” and the second is “campaign statement or conduct which is intended to attract electors to vote particular party or candidate and induced by an economic factor (receive money or materials).” However, it is not an easy task, because in a political process, there are so many “political languages” filled with symbols.

Based on above-mentioned description, it can be concluded that the provisions to prevent several inappropriate actions in election process have been established by the legal framework in Indonesia, Malaysia, Singapore, and the Philippines. However, in the Indonesian legal framework there are still loopholes which can be used by corrupt politicians, such as no “treating” provision and very few provisions concerning official misfeasance.

In addition to that, it seems that all legal systems have not addressed the negative behaviour committed by some ruling parties which is “campaign before the campaign period.” This perpetrator uses unclear budget source (state budget or private budget). This conduct can be in the form of displaying picture or symbols in public space mentioning about its success. This is normally practised long before an election period. By using election offence provisions provided in election law, those kinds of behaviour cannot be stopped and prosecuted. This practise will create unfair conditions and obstruct a “level playing field.” Accordingly, such behaviour should be regulated and prohibited.

#### 4.11 Arrangement of Election Offences

In civil law countries, such as Indonesia, various criminal conducts are compiled systematically in a penal code, including actions considered as blemishing the purity of the elections. Within the *Indonesian Criminal Code*,<sup>79</sup> there are five sections that regulate crimes related to the elections process. Five sections in Chapter IV – Second Book of KUHP regarding “Crime concerning the performance of state duties and state rights,” sections 148, 149, 150 and 152 of the KUHP.<sup>80</sup>

In the light of the principle *lex specialis derogate lex generalis* – the election offences provisions in *Indonesian Criminal Code* are no longer valid. There was a case which did not follow this principle and it occurred in the case of *Kohirman, Sudirman, and Chun Masindo* at Lubuk Sikaping District Court (West Sumatra Province) in the 1999 General Elections. In that case, the district attorney charged the defendants based on both the Elections law (*Law No. 3 of 1999*) and *Indonesian Criminal Code* (KUHP).

In this case, the District Court of Lubuk Sikaping<sup>81</sup> held that the First Defendant Drs. Kohirman and the Third Defendant Chun Masido found guilty for committing the criminal action of collectively forging letters, violating the section 263 (1) and Section 55 (1) of Book I, KUHP. From the point of view of the application of the principle of *lex specialist derogate lex generalis* that decision is incorrect.

<sup>79</sup> *Indonesian Criminal Code (KUHP)* was derived from *Wetboek van Strafrech (WvS)* which was enacted in Netherland Indies (Indonesia before its independence) in 1917. With the *Law No. 1 of 1946* the KUHP was enacted officially in Indonesia. KUHP has been amended several times. Several crimes in KUHP latter regulated with special laws such as anti corruption law which repeal a number of KUHP sections into corruption crimes. Similarly, in the elections law there are also several sections which in substance are similar to the sections in the KUHP.

<sup>80</sup> The existence of criminal provisions related to the elections process in KUHP is interesting because when WvS was enacted in 1917, those sections had already existed, while Indonesia was still under the colonization of the Dutch that there were no elections. In the Netherland, elections had been held at that time. The country has a bicameral system, the Constitution of 1815 specifies that direct elections be done to elect the Second Chamber. Meanwhile the First Chamber is elected indirectly by the provincial representative body (*Provinciale Staten*). See D. C. Fokkema, et. al., (Ed), *Introduction to Dutch for Foreign Lawyers*, (Deventer: Kluwer B.V, 1978) at 404.

<sup>81</sup> Decision No. 106/Pid.B/2000/PN.LBS dated 19 June 2001.

The conduct of the defendant was an offence where the settlement should be based on the Law No. 3 of 1999, instead of the *Criminal Code* (in sec 263). The law enforcement agency should fully apply that principle. By virtue of the principle *lex specialis, derogate lex generalis*, the defendant should be prosecuted based on the more specific act. In this particular case, the *Law No. 3 of 1999* should be used.

In the 2004 General Elections, this issue also arose, based on the reason that if using the Elections Law (*Law No.12 of 2003*), there will be a lapse of time.<sup>83</sup> To satisfy the sense of justice, the district attorney kept on presenting the charges by using the provisions in the KUHP (therefore, it was considered as an ordinary criminal action, wherein the expiry period is a lot longer).

In Indonesia's first elections, election offences have been regulated in *Law No. 7 of 1953*. Even though election offences have been regulated in five sections of KUHP, as has been mentioned, they are stipulated again in several sections regarding elections offences in *Law No. 7 of 1953*.<sup>84</sup> During 1971 – 1987 General Elections, *Law No. 15 of 1969* was applied in Indonesia. The law in fact, has been amended by *Law No. 4 of 1975*, the *Law No. 2 of 1980*, and the *Law No. 1 of 1985*.<sup>85</sup>

At the same time, election offences as stipulated in the *Indonesian Criminal Code* still exist and have not been annulled until today. Nevertheless, it does not mean that elections

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<sup>83</sup> According to *Law No.12 of 2003*, report of election offences must be submitted at the latest seven days after such occurrence.

<sup>84</sup> In *Law No. 7 of 1953*, election offences regulated in Chapter XV regarding the penal provision, from section 113 to section 129 there are 17 sections in this chapter. Of the 17 sections, 14 sections contain crimes (section 113 to section 126). Therefore, there are more crimes, namely 14 crimes compared to the sections regarding the election offences in KUHP that has five crimes, the provisions regarding the election offences in the *Law No. 7 of 1953*.

<sup>85</sup> Especially the criminal provision in the *Law No. 15 of 1969* was not amended even though the elections law has been amended several times. The difference between the elections law in the new order with the elections offences provision in the *Law No. 7 of 1953* principally is only concerning three things: (1) the annulment of two crimes related to fake ballots, (2) the creation of new criminal provision, and (3) the change of arrangement in the form of simplification of sections.

offence provisions regulated in Indonesian *Penal Code* are in conflict with those in elections laws, because according to the *lex specialis derogate lex generalis* principle, specific provisions should be applied rather than the general ones.

In Singapore and the Philippines, election offences are also embodied in the same legislation, not in particular election offences statute as that of Malaysia. In the Philippines, election offences are mentioned in the *Omnibus Elections Code* of the Philippines, Chapter XXII. In Singapore, election offences are mentioned in Part III of the *Parliamentary Elections Act*.

Unlike Indonesia, Singapore, and the Philippines, Malaysia has a different model. In Malaysia, all election offences are not regulated in election act, instead they are regulated in special laws relating to election offences namely *Election Offences Act 1954*. Therefore, in the *Elections Act 1958* of Malaysia, such election offences are not stated in the Act.

#### 4.12 Pattern of Election Offences Arrangement

The arrangement of election offences from these four countries are divided into two patterns, i.e., the arrangement in the elections act and the arrangement in the special act regarding election offences. Indonesia regulates election offences in the election act (*Law No 12 of 2003*), the same as in the Philippines (*Omnibus Election Code*) and Singapore (*Parliamentary Election Act*), while Malaysia regulates it in the special act regarding election offences (*Election Offences Act*).

**Table 4.5**  
**Arrangement of Election Offences**

Arrangement in Elections Act	Arrangement in Election Offences Act
Indonesia	Malaysia
Singapore	-----

The Philippines	---

Based on above description, it can be concluded that to assure a free and fair elections is very important for a democratic country since it is necessary to protect the voters, the parties participating in the elections, or the people from any fear, intimidation, bribery, fraud and other unfair practices. These practices will affect the purity of the election result, therefore, the arrangement of election offences and their settlements are needed.

Since international standards do not determine in specific ways how to arrange election offences and their settlement, the model of arrangement opted by these selected countries is generally sufficient. However, in relation to several kinds of elections in a country, it needs to consider the most effective and efficient way. For instance, in the Philippines there are elections for House of Representative, Senate, President, Provincial, Municipality, *Barangay* and other elections. The Philippines uses a codification approach in which all provisions for all categories of elections are compiled systematically in an *Omnibus Election Code*. By using this approach, all election offences are provided in only one source.

In contrast to that, Indonesia which also recognises several kinds of elections (House of Representative, Regional Representative, President, Provincial and Municipality) opted for a very different approach. All different elections are arranged in separate legislations. Each of legislation contains election offences that are basically similar.

It is submitted that the codification approach as implemented by the Philippines legal system is better. As has been mentioned by IDEA, "it encourages consistency in election administration and practices and will promote unified implementation of the law in connection

with all elections.”<sup>85</sup> The alternative approach can be proposed, that is one legislation governing election offences (such as the *Election Offences Act* of Malaysia).

With regards to procedural aspect, arrangement of criminal procedure of election offences is found in the criminal procedure code of each country, especially in Malaysia and Singapore. In the Philippines, the procedure for the handling of election offences is provided in the *Omnibus Election Code*. Meanwhile in Indonesia, election offences procedure are provided in the *Criminal Procedure Code* as well as in the *Election Law*, which creates several different rules in addition to general provisions in the *Criminal Procedure Code*.

In many countries, provisions regarding criminal procedure are usually contained in one special document, i.e., the criminal procedure code. This particular code comprises rules regarding how criminal law must be used (in a court proceeding).<sup>86</sup> The provisions regarding the criminal procedural law in the *Criminal Procedure Code* (CPD) are usually applied in general and cover criminal procedure over both the criminal conducts stipulated in the penal code and criminal conducts out of the criminal code (unless such other law create special or separate rules). Both in the Malaysia’s *Election Offences Act* and Singapore’s *Parliamentary Election Act*, it is stipulated that the criminal procedure to handle election offences shall refer to the *Criminal Procedure Code* of each country.

In a broad sense, the settlement of election offences in Malaysia are based on the *Criminal Procedure Code*, i.e., settlement process through the criminal process based on the prevailing criminal procedure law. This can be concluded from the formulation of section 6 (2) in relation to “Electoral Offences” which states that “Every offence under this part shall be a

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<sup>85</sup> International IDEA (2002), op.cit., 15.

<sup>86</sup> Remmelink, Jan, *Hukum Pidana – Komentar atas Pasal-pasal Terpenting dari Kitab Undang-Undang Hukum Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia* [Criminal Law – Comments on the Most Important Sections of Dutch Penal Code and Their Counterparts in Indonesian Penal Code], (Jakarta: Gramedia Pustaka Utama, 2003) at 3.

seizeable offence within the meaning of the Criminal Procedure Code.”<sup>87</sup> Meanwhile, in relation to “Corrupt Practices,” it is stated that “...Offences under Paragraphs (a) and (b) shall be a seizeable offence within the meaning of the *Criminal Procedure Code*.”<sup>88</sup>

#### 4.13 Lesson Learnt

Referring to United Nations guidelines,<sup>89</sup> the national law should protect a political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt actions. Basically the legal frameworks on election offences in Indonesia, Malaysia, Singapore and the Philippines have comply with these specific provisions.

However, there are weaknesses in the legal framework. In Indonesia, one example of the weakness is the no “treating” provision and limited provisions on official misfeasance. In Singapore the problem is not insufficiency of the legal framework but the establishment of a fair political condition in enforcing the provisions. It can also be concluded that, all legal framework have not effectively prevented misconduct of the ruling party or incumbent official who commit “early campaign” using various means.

There are several important lessons that can be learnt: First, inappropriate behaviours which directly or indirectly affect the election outcome must be prohibited. Alleged parties or candidates can be protected by election offences provision as well as by election petition which are not always based on election offences.<sup>90</sup>

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<sup>87</sup> *Election Offences Act 1954*, part II, section 6 (2)

<sup>88</sup> *Election Offences Act 1954*, Part III, sec 11 (1)

<sup>89</sup> United Nations, Universal Declaration of Human Rights, regarding elections -especially concerning the common elements of electoral laws and procedures.

<sup>90</sup> Regarding this matter will be further discussed in the several following chapters.



Second, the subject of election offences should cover any party who is able to commit any action that threatens the election process; therefore, the subject of election offences should not be limited to candidates. It should cover community members, voters, candidates, political parties,<sup>91</sup> election organisers, employers, government officials, security staff, legal enforcers, and foreign citizens. Concerning the broad scope of the subject of election offences, apparently the stipulation in the Philippines' *Omnibus Election Code* could be used as a reference since all parties can commit violations, which have been designated as the subject of election offences. Regarding this issue, the Indonesian legal framework must broaden the subject of election offences.

Third, provisions regarding election offences should adequately protect each stage of election. The reason is because in each stage, any violations against people's basic rights, both directly and indirectly affecting the election result could occur. Since all stages are very crucial for an election process, the provisions regarding election offences should not only focus on a certain stage (for example, campaigning stage) but also frauds in the registration of voters in which many supporters of particular parties or candidates were deliberately or negligently not registered. This situation could, either directly or indirectly, affects the election results. Similarly, it also happens in the manipulation of votes counting. With respect to this matter, the provisions in the *Omnibus Elections Code* of the Philippines can be learnt for its scope, which broadly and adequately protects each stage from various violations.

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<sup>91</sup> According to *Law No. 12 of 2003*, a political party is not regarded as the subject of election offences. This matter has once caused a problem, in the case of violation in the 2004 General Election campaign which was conducted by PPP Party in Jakarta, which was actually an official party decision. However the judge did pass any sentence to the relevant party but instead to one of the manager of the party. This was happened because in the *Law No. 12 of 2003*, there is no provision provided that political party is a subject of election offences. Indeed, in Article 141, there is an aggravating provision for election participants conducting election offences (election participants in the 2004 election are political parties for the election of DPR/DPRD and individuals for the election of members of DPD). However, there is not one definite clause that state a political party is a subject of election offences.

Fourth, to the extent the purpose and interest of arrangement of election offences can be fulfilled, the model is not a problem. Indonesia stipulates election offences in its election law (*Law No.12 of 2003*), Singapore stipulates it in *Parliamentary Election Act*, the Philippines stipulates it in the *Omnibus Election Code*, while Malaysia stipulates it separately in the *Election Offences Act*. Even though, the approaches are different, the important thing is that the provisions contained in them are exercised. However, it would be better to have one legislation as a reference for all types of election (for example, parliamentary election, presidential election, region head election).

The weaknesses in the legislation of election offences in Indonesia are as follows. First, conducts categorised as election offences are repeatedly provided in several laws, i.e., the legislative election law, the Presidential and Vice-Presidential election law, and (presently) the regional government law (which regulates the election of the head of region). Meanwhile, the substances of offences in those three laws are equally the same. Second, it is not clear whether election offences in the *Indonesian Criminal Code* are still valid after election offences were provided in the *Law No. 12 of 2003*. According to the principle of *lex specialis derogate lex generalis*, election offences stipulated in the general election law should be applied, instead of election offences found in the *Criminal Code*.

It is not emphasised whether types of offences stipulated in *Law No.12 of 2003* are crimes or misdemeanor. This can create problems since according to the general provisions in KUHP, there are several different treatments between crimes (*kejahatan*) and misdemeanour (*pelanggaran*), for example, an attempt or assisting misdemeanour is not punishable. Difficulties also arise when election offences are committed in abroad. According to section 5 (1) point 2 of KUHP, an Indonesian citizen who commits a crime in another country can be prosecuted under

Indonesian criminal law, as far as such conduct according to Indonesian law is categorised as a crime (*kejahatan*) while in that country is punishable (either crime or misdemeanour).

This type of question once arose in the case of election offences committed during a voting process by Indonesian people in Tawau, Sabah, Malaysia,<sup>92</sup> i.e., illegal punching of thousands of ballots. Eventually, this case was settled in Central Jakarta District Court. The fact that an election offence committed in another country can be handled by the Indonesian court may be interpreted that election offences are categorized as crime, instead of misdemeanour.<sup>93</sup> But, without any provision about category of election offences (crime or misdemeanour), there may be different opinions and inconsistent application of the law.

#### 4.14 Criminal Process and Election Petition

As stipulated in the international standards, the legal framework of each country should provide the right to challenge election results and for aggrieved parties to seek redress. The petition process should set out the scope of available review, procedures for its initiation and the powers of the independent judicial body charged with such review.<sup>94</sup> The validity of a parliamentary election may be challenged by unsuccessful candidates or electors by making an election petition to an election court.<sup>95</sup>

There are two processes related to election offences. The first is through the criminal justice system or criminal process and second, through election petition. In the first method, the process commenced with a complaint (report) regarding election offences (or the findings of election offences by law enforcement official), while in the second process, it begins with

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<sup>92</sup> See Election Supervisory Committee's Final Report, 2004.

<sup>93</sup> Refer to section 5 *Indonesian Criminal Code*.

<sup>94</sup> United Nations, *op.cit.*, 16.

<sup>95</sup> Thompson, *op.cit.*, 161.

submission of election petition by aggrieved parties to election court or election judge. Several cases can be referred to, in order to clarify that the settlement of election offences may be achieved through either the criminal process or election petition process.

In *Hamad bin Mat Noor v Tengku Sri Paduka Raja & OR*, the court held that:<sup>96</sup>

“...the scheme in the *Election Offences Act 1954* can be divided into two clear areas of judicial functions. The first relates to those provisions pertaining to acts the proof of which must be done by way of criminal prosecutions in a criminal court which by the end of the day will hand out punishments if the charges are proven. The second relates to acts, allegation which are to be brought before the Election Judge by way of petitions with the view to avoid the election. (Underline added)

In Malaysia, the Sessions Court deals with the first type of offence while the Election Judge deals with the second type. The duty of an Election Judge is to purge elections of all kinds of corrupt or illegal practices so as to protect the political rights of the citizens and the constituency.<sup>97</sup>

In *Partai Demokrasi Indonesia Perjuangan* case,<sup>98</sup> the Constitutional Court of Indonesia held that election offences should be handled through the criminal process, however it will not affect the Constitutional Court proceedings. *Law No 12 of 2003* has governed in detail about election offences and the procedure to settle these kinds of offences. Thus, election offences should be handled by its proper procedure. The Constitutional Court shall respect this kind of settlement which are handled by election supervisory and law enforcement agencies.

In *KH. Thohlon Abd Ra'uf* case,<sup>99</sup> the Constitution Court of Indonesia held that election offences are not the ground for election petition before this Court. According to the Constitutional Court, if there is allegation of irregularities or manipulation committed by electoral bodies in Sumatera Selatan province, refer to section 127 (1) and (2) of *Law No. 12 of*

<sup>96</sup> [1993] 2 AMR 33, 1938-1939.

<sup>97</sup> Tunku Sofiah Jawa, *Malaysian Election Laws*, Vol. III, op.cit.,1322-1330.

<sup>98</sup> Case No 024/PHPU-CI.II/2004.

<sup>99</sup> Petitioner was unsuccessful candidate of DPD in Sumatera Selatan province (Case No. 047/PHPU.A-II/2004)

2003, the petitioner should have reported it to the election supervisory committee who would submitted it to the police (instead of using it as an election petition).

In the Philippines case of *Manuel C. Sunga v Comelec and Ferdinand B. Trinidad*,<sup>100</sup> the judge stated that an election offence has criminal as well as electorate aspects. Its criminal aspect involves the ascertainment of the guilt or innocence of the accused candidate as in any other criminal case. It usually entails a full-blown hearing and the quantum of proof required to secure a conviction is beyond reasonable doubt. Its electoral aspect, on the other hand, is a determination of whether the offender should be disqualified from his/her office. This is done through an administrative proceeding which is summary in nature and require only a clear preponderance of evidence. Under section 4 of the *Comelec Rules of Procedure*, petitions for disqualification “shall be heard summarily after due notice.” It is the electoral aspect that is more important, under which a candidate who make a mistake may be disqualified even without prior criminal conviction.

Based on the ruling in those cases, it is clear that settlement of election offences can be by two different ways: first, its criminal aspect is settled through the criminal process; second, its electoral aspect is settled through an election petition. These two different ways of settlement have consequences. Chapter five of this thesis deals with criminal process, while chapter six analyses its settlement through an election petition.

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<sup>100</sup> [G.R. No. 125629, Mach 25, 1998]

## CHAPTER 5

### SETTLEMENT OF ELECTION OFFENCES THROUGH THE CRIMINAL PROCESS

*"Elections contribute to the legitimacy of a government and the political system, so long as they are perceived to be conducted freely and honestly."*<sup>1</sup>

This chapter discusses settlement of election offences through a criminal process. Two aspects will be emphasized: substantive and procedural aspect. The substantive aspect will focus on implication of conviction, while the procedural aspect will cover issues on jurisdiction of certain institutions, availability of proof, and time taken for settlement (streamline the process).

#### 5.1 Substantive Aspect: Implication of Conviction

According to international standards, irregularities and their implications on the outcome of elections must be settled by national law.<sup>2</sup> There are questions related to legal implications in addition to criminal sanctions, which convicted offenders must bear. For example, can one also be sanctioned with the cancellation of an election result? If so, can all offences be subjected to this kind of sanction? This sub chapter will examine the implication of conviction in election offence cases in Indonesia, Malaysia, Singapore and the Philippines.

##### 5.1.1 Implication of Conviction in Indonesia

*Law Number 12 of 2003* that regulates elections in Indonesia provides no provision on additional legal consequences for the offenders of election offences other than criminal

<sup>1</sup> Mauzy, Diane K and R.S. Milne, *Singapore Politics under the People's Action Party*, (London: Routledge, 2002) at 143.

<sup>2</sup> United Nations Centre for Human Rights. *Professional Training Series No. 2, Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: United Nations, 1994) at 16.

sanctions. The law does not suggest the annulment of the election result for candidates who violated election laws.<sup>3</sup> There is a provision in another chapter regarding political campaign violations which would bring about the cancellation of the candidacy. Nonetheless, the seat that has been obtained will still belong to the party of the offender, and can be transferred to another candidate of the same party. For example, if candidate A from Party B commits a violation, and the court declares him or her guilty, then A's candidacy will be cancelled by the Election Commission. However, the votes or seats won by Party B will not be transferred to another party; instead it will fall to another candidate from Party B.

For elections of members of DPR and DPRD, Indonesia uses an electoral system in which one constituency is provided with more than one representative (between 3 to 12 seats), and each political party is allowed to propose a number of candidates exceeding the number of seats provided.

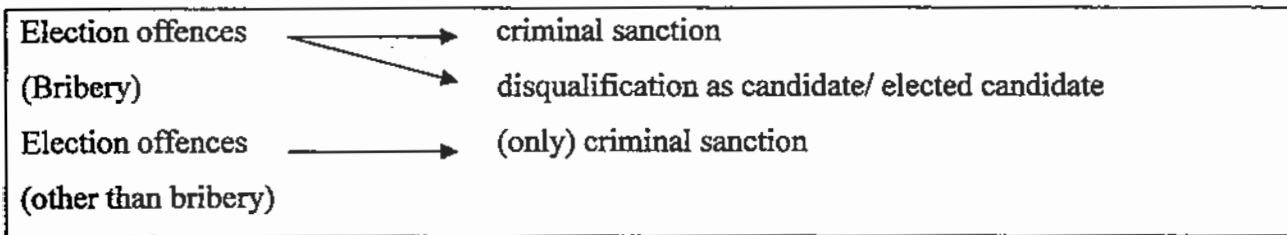
This is stipulated in *Law Number 12 of 2003* section 65 (2) which states that the number of candidates each political party can propose in elections should be no more than 120 percent of the stipulated seats in each constituency. While the replacement of a candidate who is convicted will proceed according to the provision of section 112 which states that the replacement of an elected candidate can only proceed if he/she is deceased or no longer qualified to be a member of DPR, DPD, Provincial DPRD, or Regency/Municipality DPRD.

Replacement of an elected candidate of DPR, Provincial DPRD, or Regency/Municipality DPRD members as meant by sub section (1) is achieved by removing the candidate from the list of candidates in the relevant constituency based on the provision of section 107. Meanwhile,

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<sup>3</sup> Certainly, there is stronger ground for criminal sanction if the offender is the elections officer or participant, i.e., the criminal sanction is added by 1/3 of the criminal sanction stipulated in the relevant section, but not cancellation. Section 141 states that if an offence is committed intentionally by the elections officer or participant, the criminal sanction will be added by 1/3 (one third) of such criminal sanction mentioned in the relevant section.

replacement of an elected candidate of DPD members as referred to by sub section (1) is accomplished by the candidate acquiring the second most votes in the same constituency.



The election offence referred to in *Law Number 12 of 2003* section 77 is commission of bribery. It states that during the campaign period up to the voting day, candidates for members of DPR, DPD, Provincial DPRD, and Regency/Municipality DPRD are prohibited from promising and/or giving money or other materials which will influence the voters.<sup>4</sup> A candidate who is convicted<sup>5</sup> of committing violation as referred to by sub section (1) will be removed from his/her candidacy by KPU/Provincial KPU/Regency/Municipality KPU.

In light of section 77 (and its elucidation), to be removed from candidacy on the grounds of bribery, a candidate must be convicted with a final decision from the court. Therefore, it must be in accordance to the bribery offence as stipulated in *Law Number 12 of 2003* section 139 (2) which states that:

Any candidate who is intentionally giving or promising money or other material compensation to other people in order to avoid them from fulfilling their voting rights, or to persuade them to choose certain elections participant, or to use their voting rights in a certain manner so as to render ballots invalid, is subject to imprisonment of at least 2 (two) months or at most 12 (twelve) months and/or a fine of at least Rp. 1,000,000.00 (one million rupiah) or at most Rp. 10,000,000.00 (ten million rupiah).

<sup>4</sup> Elucidation of Section 77 (1) states that what is meant by promising and/or giving is the initiative coming from the candidate who promises and gives to influence the voters. For the Presidential Election, in addition to bribery, receiving campaign fund from prohibited sources is also an election offence which can result in the cancellation of such candidate for the Presidency and Vice-Presidency.

<sup>5</sup> Sub section (2) states that what is meant by convicted in this sub section is being convicted by the court with final decision.



According to this Law, the bribery offence is the only offence that can bring about cancellation of candidacy. Therefore, a candidate who is convicted of committing other election offences will not be removed from candidacy, even if he/she is found guilty of committing violation of “intentionally disturbing or obstructing the conduct of an election campaign,”<sup>6</sup> “giving or receiving campaign funding above the permitted limit,”<sup>7</sup> “intentionally giving incorrect information in the report of the election campaign fund,”<sup>8</sup> “intentionally using violence or threat of violence and obstructing anyone from exercising his voting right,”<sup>9</sup> or other election offences.

It can be argued that there are several other election offences sanctioned with cancellation of candidacy.<sup>10</sup> For example, the violation of sections 60,<sup>11</sup> 62<sup>12</sup> and 63<sup>13</sup> of *Law Number 12 of 2003* could lead to cancellation of candidacy.

<sup>6</sup> *Law Number 12 of 2003*, section 138 (4)

<sup>7</sup> *Law Number 12 of 2003*, section 138 (5)

<sup>8</sup> *Law Number 12 of 2003*, section 138 (7)

<sup>9</sup> *Law Number 12 of 2003*, section 139 (1)

<sup>10</sup> However, they will not annul the election result of the relevant political party.

<sup>11</sup> Section 60, a candidate for a member of DPR, DPD, Provincial DPRD, and Regency/Municipality DPRD must fulfil the requirements:

- a. A citizen of the Republic of Indonesia, 21 years old or more;
- b. Faithful to God;
- c. Domiciled in the territory of the Republic of Indonesia;
- d. Capable of speaking, reading, and writing in the Indonesian language;
- e. Having an education of at least senior high school or its equivalent;
- f. Faithful to *Pancasila* as the state foundation, the 1945 Constitution, and the ideal of the Proclamation of 17 August 1945;
- g. Not a former member of the forbidden organisation of the Indonesian Communist Party (*Partai Komunis Indonesia*), including its mass organisations, or not a person directly or indirectly involved in G30S/PKI, or other forbidden organisations; (this requirement is now annulled by Indonesian Constitutional Court ruling)
- h. His voting right is not being revoked based on a court decision having permanent legal power;
- i. Never been imprisonment for any criminal offences threatened by imprisonment of five years or more on a final court decision;
- j. Physically and mentally healthy based on the result of health examination from a competent doctor; and
- k. Listed as a voter.

<sup>12</sup> Section 62 states that a candidate for a member of DPR, Provincial DPRD, and Regency/Municipality DPRD besides having to fulfil the requirement as a candidate as provided in section 60, must also be registered as a member of a political party that is evidenced by a membership identity card.

<sup>13</sup> Section 63 states that a candidate of a member of DPD besides having to fulfil the requirement as a candidate as meant in section 60, must also fulfil the requirement: a. having domicile in the relevant province for at least three years consecutively which is counted up to the date of submission as a candidate or have domiciled for 10 years

In accordance with the provision of section 112, the replacement of an elected candidate will commence if it is proven in a court that the candidate has committed offences in the form of using forged letters and/or certificates, incorrect information to fulfil the requirements of his/her candidacy. The candidate can then be removed by KPU and will be replaced by another candidate from the same political party (for DPR and DPRD), and from the list of subsequent candidates for DPD (for election of members of DPD). These offences for violation of section 137 sub sections (3),<sup>14</sup> (4),<sup>15</sup> and (7).<sup>16</sup>

According to Indonesian *Law No. 12 of 2003*, election offences do not necessarily lead to annulment of votes or disqualify a candidate. Only bribery is explicitly considered as an election offence that would lead to cancellation of a candidate that has been found guilty. However, the provision is implicitly intended for two other offences related to the fulfilment of requirements of a candidate.

Surprisingly, there are several other offences that are truly dangerous and may greatly influence the election results. Nevertheless, the law did not provide for such offences with cancellation of election results. These offences are stipulated in section 140 sub sections (1),<sup>17</sup> (2),<sup>18</sup> (3)<sup>19</sup> and (4)<sup>20</sup> of *Law No. 12 of 2003*. In other words, if such election offences occur, the offender will be imposed with criminal sanction, but his/her election results will not be affected.

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since he was 17 years old in the relevant province; b. he is not an officer of a political party for at least four years which is counted up to the date of submission as a candidate.

<sup>14</sup> Anyone who intentionally forges a letter which, according to a provision in this Law, is required to pursue candidacy in the elections, with the purpose of using it for oneself or other people as if it is the authentic or genuine letter.

<sup>15</sup> Anyone who intentionally and knowingly uses or instructs anyone to use a letter which is not valid or falsified, as meant in sub section (3), as a valid letter.

<sup>16</sup> Anyone who intentionally gives incorrect information or false document to fulfil a requirement to participate as a candidate in elections.

<sup>17</sup> Anyone who intentionally commits an action that causes a vote to be invalid or causes a certain election participant takes additional votes or its acquired votes becomes lessen.

<sup>18</sup> Anyone who intentionally damages or loses the sealed election result.

<sup>19</sup> Anyone who due to his negligence has caused the damage or the lost of the sealed election result.

<sup>20</sup> Anyone who intentionally alters the vote calculation result and/or the minutes and the certificate of vote calculation result.

This is certainly unfair since the offences may affect greatly the acquisition of seats in parliament.<sup>21</sup> *Law No. 12 of 2003* has provided nothing on this issue. It is very important to ensure that the law provides legal consequences for all possibilities of fraudulent offences in elections which can influence the results. In addition to criminal sanction, the election outcome of the offender should be declared void by the court, and subsequently the election should be repeated.

Apparently, legislatures rely on the role of the Constitutional Court which has been mandated by the 1945 Constitution to settle disputes over election results.<sup>22</sup> Section 134 of *Law No 12 of 2003* states that in case of a dispute regarding elections result<sup>23</sup> as referred to by section 104, the Constitutional Court has ultimate authority to hear and decide the matter.

Therefore, it is clear that *Law No. 12 of 2003* and *Law No. 24 of 2003* do not impose cancellation of the election result obtained by the offender's or his/her party. Even in the case of bribery, offenders are only to be annulled as a candidate, while the parliament seats of his/her political party are not affected. Moreover, other offences outside of bribery only entail penal sanction and do not have cancellation impact toward the offenders.

*Siti Fatimah case* in Central Java Province is a clear example of this problem.<sup>24</sup> During the 2004 General Elections, Siti Fatimah was a candidate for Representative Council of Regions (*Dewan Perwakilan Daerah*) in Central Java province. She was alleged to have committed

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<sup>21</sup> Several cases occurred in the 2004 Legislative Election wherein the court decision stated that election offences had been committed, i.e., the changing of votes in several areas which affected the acquisition of seat but this decision could not be used to change the election result which cases have been settled by the Constitutional Court. These cases, for example, occurred in Central Sulawesi Province and Sorong (Papua Province).

<sup>22</sup> The Constitutional Court has judicial power and authority to settle in the first and last degree any disputes regarding the election result. Constitution of the Republic of Indonesia 1945 Article 24 C (1).

<sup>23</sup> Autheman, Violaine "*Penyelesaian Sengketa Berkaitan dengan 'Hasil Pemilu' Kilasan Praktek Peradilan di Beberapa Negara di Seluruh Dunia*" [Settlement of Dispute concerning Result of Election: Court Practices in Several Countries of the Word], Paper presented in Workshop The Role of Constitution court on Settlement of Result of Election Disputes through a Transparent Court Process, 26-28 February, 2004, 7.

<sup>24</sup> Case No. 763/Pid.B/2003/PN.Smg

forgery of some documents she submitted as a requirement of DPD candidacy. According to section 137(6) this conduct is considered as an election offence. The prosecutor successfully proved the act of forgery because at least three people in the list of her supporters in fact never provided their support. Finally, the District Court of Semarang found her guilty of committing an election offence.

However, the fact that she was convicted of committing an election offence did not affect her candidacy as a DPD member. She was never disqualified by the Election Commission (KPU), because *Law No. 12 of 2003* provided that unless a candidate is found guilty of committing bribery, he/she cannot be disqualified from candidacy on the grounds of election offences.

It is submitted that the provision which does not impose a disqualification on a candidate who has been convicted of an election offence is insufficient and will not prevent political parties and candidates from committing election offences. As we have seen from *Siti Fatimah's case*, the criminal sanction will never stop the offender from running as a candidate. This condition does not have a deterrence effect.

### **5.1.2 Implication of Conviction in Malaysia**

Different from Indonesian's *Law No 12 of 2003*, Malaysia's *Election Offences Act 1954* imposes direct implications for a candidate who commits an election offence. The *Election Offences Act 1954* section 31 (1) states: "The election of a candidate at any election is avoided by his conviction for any corrupt or illegal practice at such election." Meanwhile, section 31 (2) provided a process after a conviction. It provides that:

"Within fourteen days after Sessions Court declared its verdict on a candidate who commits any corrupt or illegal practice at an election, the Sessions Court Judge or the

Registrar of the Sessions Court will certify the Court's determination – (a) to the Election Commission in the case of an election of a person to be a member of the *Dewan Rakyat*, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorised to conduct; or (b) in the case of any other election, to the State Authority."

As has been discussed in the previous chapter, election offences in Malaysia can be categorised into three types of offences, i.e., Electoral Offences, Corrupt Practices, and Illegal Practices. The provision of section 31 (1) shows that any practices or illegal practices committed by a candidate may lead to annulment of his/her candidacy. Therefore, a court's verdict that a candidate has been convincingly proven of committing a corrupt or illegal practice will be grounds for his/her disqualification by the Election Commission.

Several provisions in the *Election Offences Act 1954* showed that beside criminal sanction, another sanction would also apply. Section 3 (1)<sup>25</sup> states that any election candidate proven guilty of committing offences as regulated in this section, in addition to being threatened by imprisonment and fine, will also "...be incapable of being registered or listed as an elector or voting at any election or being elected at any election, and in case the candidate has already gained a seat at the parliament, his seat will be vacated from the date of court's decision."<sup>26</sup>

(Underline added) This statement is re-iterated in section 4<sup>27</sup> and section 4 A.<sup>28</sup>

Similar provisions are also found in section 7 to section 11 which provided sanctions for corrupt practices category. In this regard, section 11 (2) states:

"...be incapable of being registered or listed as an elector or voting at any election or being elected at any election, and in case the candidate has already gained a seat at the parliament, his seat will be vacated from the date of court's decision"

<sup>25</sup> This section stipulates electoral offences by any person.

<sup>26</sup> According to section 3 (2) of the *Election Offences Act 1954*, this provision also applies to a person proven of committing offences in sub section 4 (1) of the *Sedition Act 1948*, which is an offence by reason of section 3 (1) (f) of that Act.

<sup>27</sup> This section stipulates electoral offences by election officer.

<sup>28</sup> This section stipulates electoral offences of promoting feelings of ill-will or hostility.

Lastly, illegal practices will also be met with annulment of a position. Section 27 (1) states that election offenders:

“...will become disenfranchised for a period of five years from the date of his/her conviction by court’s decision, and in case at that date he/she has been elected a Member of Parliament, his/her appointment will be annulled.” (Underline added)

Therefore, it is obvious that Malaysian legal framework provides a broader consequence for committing such offences, i.e., in addition to being penalised by criminal sanctions, election law offenders will be disqualified from candidacy and his/her party’s gain in votes will be annulled. This is very important since the law will be a stronger deterrent force for anyone trying to commit election offences in any form.

In addition to that, for five years after a conviction, he/she will not be able to be registered as voter and being elected at any election. Certainly, this is an important affirmation, i.e., relating election offences to the direct sanction related to the losing of rights in the elections (not merely a criminal sanction). It needs to be added that the cancellation of the election result is not only based on a conviction of election offences, but also through election petition.

### **5.1.3 Implication of Conviction in Singapore**

With regard to implication of conviction, Singapore’s *Parliamentary Elections Act* is similar to that of the Malaysian *Election Offences Act 1954*. The difference is only in respect to quantity of sanction to election offenders, while Singapore applies three to seven years of disenfranchisement, Malaysia provides for five. Section 55 (1) of the *Parliamentary Elections Act* states:

“...will become disenfranchised for a period of seven years from the date of his/her conviction by court’s decision, and in case at that date he/she has been elected a Member of Parliament, his/her appointment will be annulled.” (Underline added)

For a corrupt practice, section 61 (2) of the *Parliamentary Elections Act* states:

“Anyone who is convicted of a corrupt practice will become disenfranchised for a period of seven years from the date of his/her conviction by court’s decision, and in case at that date he/she has been elected a Member of Parliament, his/her appointment will be annulled.” (Underline added)

Illegal practice is also met with sanction of disenfranchisement, only with a shorter length of period. Section 79 (1) of the *Parliamentary Elections Act* states:

“...will become disenfranchised for a period of three years from the date of his/her conviction by court’s decision, and in case at that date he/she has been elected a Member of Parliament, his/her appointment will be annulled.” (Underline added)

Section 89 of the *Parliamentary Elections Act* clearly places annulment of votes of a candidate on the grounds of court’s sanctions for his/her election offence. Section 89 states that: “Election of a candidate as a Member of Parliament will be cancelled on the grounds of court’s conviction on corrupt or illegal practices.” This is similar to the Malaysian *Election Offences Act 1954*, especially section 31 (1).

Therefore, it is clear that legislatures had intended to make annulment of election results as direct legal consequences to election offences, in addition to criminal sanctions. Moreover, candidates who commit election offences, illegal, or corrupt practices will also face disenfranchisement as a legal consequence hence creating an effective deterrence impact for election offence offenders.

In Malaysia and Singapore, if the offender is proven guilty, the court will impose criminal sanction to the defendant in accordance with the punishable criminal sanction. If the offender has become a candidate for a member of parliament, another sanction will be added;

removal of his/her candidacy. This has been confirmed in the *Election Offences Act 1954* and in section 89 of the *Parliamentary Election Act*, which states that: "The election of a candidate as a Member is annulled by his conviction for any corrupt or illegal practice." It is clear therefore, that settlement of election offences through the criminal justice process would result in imposition of criminal sanction as well as annulment of candidacy and any elected office gained by the offenders.

#### 5.1.4 Implication of Conviction in the Philippines

As regulated in Malaysia and Singapore, in the Philippines, any individuals convicted of committing election offences will be disqualified from public office and will be disenfranchised. The *Omnibus Election Code* of the Philippines section 264 states: "...In addition, the guilty party will be sentenced to suffer disqualification from holding public office and deprived of the right of suffrage."

The law provided disqualification from public office, in addition to annulment of any elections results. Section 68 puts clearly that disqualification from holding office as a result of election is a legal consequence for those who commit election offences. According to section 68:

"Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under sections 89, 95, 96, 97 and 104; or (e) violated any of sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, will be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country will not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.<sup>29</sup> (Underline added)

<sup>29</sup> *Omnibus Election Code* of the Philippines, section 68



Unlike Indonesia's election law, Malaysia and Singapore impose annulment of election results on all corrupt practices and illegal practices. Meanwhile, the Philippines elaborate five categories of election offences which lead to annulment of election results, as stipulated by section 68 of the *Omnibus Election Code* of the Philippines. They are (1) bribery (giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions); (2) terrorism (terrorism to enhance candidacy); (3) excess in election campaign (spent in his election campaign an amount in excess of that allowed by the Code); (4) solicited, received or made any contribution prohibited under sections 89,<sup>30</sup> 95,<sup>31</sup> 96,<sup>32</sup> 97,<sup>33</sup> and 104;<sup>34</sup> and (5) violated any of sections 80,<sup>35</sup> 83,<sup>36</sup> 85,<sup>37</sup> 86,<sup>38</sup> and 261, paragraphs d,<sup>39</sup> e,<sup>40</sup> k,<sup>41</sup> v,<sup>42</sup> and cc, subparagraph 6.<sup>43</sup>

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<sup>30</sup> *Omnibus Election Code* of the Philippines, section 89. Transportation, food and drinks. It will be unlawful for any candidate, political party, organisation, or any person to give or accept, free of charge, directly or indirectly, transportation, food or drinks or things of value during the five hours before and after a public meeting, on the day preceding the election, and on the day of the election; or to give or contribute, directly or indirectly, money or things of value for such purpose.

<sup>31</sup> Prohibited contributions.

<sup>32</sup> Soliciting or receiving contributions from foreign sources.

<sup>33</sup> Prohibited the raising of funds.

<sup>34</sup> Prohibited donations by candidates, treasurers of parties, or their agents.

<sup>35</sup> *Omnibus Election Code* of the Philippines, section 80. Election campaign or partisan political activity outside campaign period.

<sup>36</sup> *Omnibus Election Code* of the Philippines, section 83. Removal, destruction, or defacement of lawful election propaganda prohibited.

<sup>37</sup> *Omnibus Election Code* of the Philippines, section 85. Prohibited forms of election propaganda.

<sup>38</sup> *Omnibus Election Code* of the Philippines, section 86. Regulation of election propaganda through mass media.

<sup>39</sup> Coercion of subordinates.

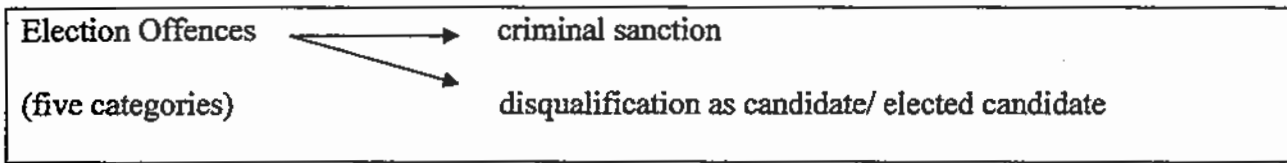
<sup>40</sup> Threats, intimidation, terrorism, use of fraudulent device, or other forms of coercion.

<sup>41</sup> Unlawful electioneering.

<sup>42</sup> Prohibition against release, disbursement or expenditure of public funds.

<sup>43</sup> Any person who solicits votes or undertakes any propaganda, on the day of election, for or against any candidate or any political party within the polling place or within a radius of thirty meters thereof.

Moreover, section 68 of the *Omnibus Election Code* of the Philippines also states that the candidate who is found guilty of committing five categories of election offences<sup>44</sup> will be removed from candidacy or cancelled as an elected candidate.



Section 264 of the *Omnibus Election Code* of the Philippines stipulates that anyone who is found guilty of any election offence under this Code will be punished with imprisonment of not less than one year but not more than six years. In addition, the guilty party will be sentenced to suffer disqualification from holding public office and deprivation of suffrage, as stipulated by section 68. The words “anyone who commits election offence under this code” should be interpreted that the offender of these offences can be anyone, not only a candidate.

### 5.1.5 Comparison and Patterns on Implications of Election Offences

Pursuant to the election laws in Indonesia, Malaysia, Singapore, and the Philippines, two ways in which election offences could lead to annulment and removal from candidacy or from elected public office are as follows: (1) court’s decision on proven election offence will result in criminal sanction, annulment of votes, removal from candidacy or elected public office, for the offender; (2) court’s decision on proven election offence will result in criminal sanction and removal from candidacy but number votes gained in the election will not be annulled and instead be transferred to another candidate from the same party. This is especially so in election system

<sup>44</sup> Five categories : (1) bribery [giving money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions]; (2) terrorism [terrorism to enhance his candidacy]; (3) excess in election campaign [spent in his election campaign an amount in excess of that allowed by this Code]; (4) solicited, received or made any contribution prohibited under sections 89, 95, 96, 97 and 104; and (5) violated any of sections 80, 83, 85, 86 and 261, sub-sections d, e, k, v, and cc, sub sub-section 6.

with multiple candidates for every constituency. Table 5.1 shows which path is taken in each country.

**Table 5.1**  
**Election Offences and Cancellation / Disqualification**

	Country	Notes
Criminal sanction and annulment of election results	Malaysia, Singapore, The Philippines	In <i>pre-proclamation</i> controversy, election commission may order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation (Philippines)
Criminal sanction and removal from candidacy	Indonesia The Philippines	In Indonesia, removal from candidacy solely for bribery offences In the Philippines, removal from candidacy for five category of offences

Absence of provision that legalises annulment of election results in case of other serious offences other than bribery is indeed a serious loop hole in Indonesian election legal framework. Several categories of offences could significantly influence the acquisition of votes and seats. Nevertheless, the law does not provided them with annulment of election results, as stipulated in section 140 (1), (2), (3) and (4) of *Law No. 12 of 2003*. In other words, if such election offences occur, the offender will receive penal sanction, but the election result will remain.

Under the Indonesian legal system, the election result can only be annulled through petition from petitioners to the Constitutional Court. If the process is conducted through criminal proceeding, the court's settlement will only result in criminal sanction to the offender, but it does not affect the election result.

Moreover, election offences cannot become grounds for submitting election petition to the Constitutional Court.<sup>45</sup> The only ground for election dispute is miscalculation by election

<sup>45</sup> This issue will be discussed in chapter six.

commission. It is submitted, since there is no elaboration on what miscalculation includes, it should be interpreted broadly, which would include mistake by coincidence, negligence or deliberateness.

Different from the provisions in Indonesia, Malaysian law provides direct implication for election offences in the form of annulment of election result. Such provision can be seen in the *Election Offences Act 1954* section 31 (1) and (2). This law gives two grounds to contest or challenge the election result: conviction in criminal court<sup>46</sup> and election petition.<sup>47</sup> Malaysian *Election Offences Act 1954* Part VII provides that all types of corrupt or illegal practices, either committed by the candidate or with the candidate's consent, or by any agent of the candidate, may become grounds for submission of election petition.<sup>48</sup>

In terms of relation between election offences and cancellation of election result, Singapore's legal framework and Malaysia's are in agreement. Furthermore, the Philippines legal framework provides that there are two grounds on which annulment of election results can be done: judicial proceedings of election offences and application of provisions on contested election returns, pre-proclamation controversy, and election contests. Table 5.2 provides comparison of legal consequences in four countries.

**Table 5.2**  
**Legal Consequences of Election Offences**

Country	Criminal Sanction	Disenfranchisement	Annulment of Election Results
Indonesia	Yes Imprisonment, Fine	None	Yes Only for bribery
Malaysia	Yes Imprisonment,	Yes 5 years since being	Yes For all election offences

<sup>46</sup> *Election Offences Act 1954*, Part VI section 31

<sup>47</sup> *Election Offences Act 1954*, Part VI section 32

<sup>48</sup> This issue will be discussed in chapter six.

	Fine	proven	
Singapore	Yes Imprisonment, Fine	Yes 7 years or 3 years since being proven	Yes For all election offences
The Philippines	Yes Imprisonment, Fine	Yes	Yes, for : 1) bribery; 2) terrorism to gain votes; 3) excess in election campaign; 4) solicited, received or made any contribution that is prohibited; and 5) violated any of sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6.

The international standards also regards as important whether each country has a legal framework that incorporate rules regarding the impact of irregularities towards the election result. Based on the above-mentioned description, it can be concluded that the legal framework on elections of these four countries have established rules regarding the impact of irregularities towards the election result. However, there are two issues. First, whether a conviction of irregularities or election offences will annul election result or not and second is whether a conviction of irregularities or election offence will disqualify a candidate involved in the offence or not.

On the first issue, Malaysia, Singapore and the Philippines have unanimous rules that conviction on election offences committed by a candidate or his/her agent will lead to annulment of the election result. On the other hand, Indonesia has no similar rules on this issue. If a candidate convicted for having involved in certain irregularities or election offences, he/she will only get penal punishment. Even if the candidate has committed offences other than bribery, he/she still can run for the election process. It is submitted that the rules applied in Malaysia, Singapore and the Philippines in this particular issue is more in line with international standards

which maintain that legal framework should address the impact of irregularities toward outcome of elections.

On the second issue, Malaysia, Singapore and the Philippines have shared common rules that conviction of irregularities or election offences will disqualify a candidate involved in the offence. The Indonesian legal framework, for certain level, has also regulated that irregularities or election offences will disqualify a candidate if the candidate is involved in one offence. The difference is that for Malaysia and Singapore, conviction of all election offences will result in annulment of election outcome. While in the Philippines, selected offences (such as bribery and terrorism to gain votes) are regarded as ground for annulment. In contrast to that, Indonesia provided only one offence of which conviction will bring about disqualification of a candidacy, that is, for the offence of bribery. This causes the law to be ineffective to prevent election offences. During the 2004 General Elections at least 1022 cases were settled in courts all over Indonesia.<sup>49</sup>

It can be proposed that Indonesia should follow Singapore, Malaysia, and the Philippines in establishing provision concerning removal of candidacy and annulment of election results, as well as removal from elected public office as legal consequences for election offences. Furthermore, offenders should also be revoked of his/her right to vote or to be elected for a certain period (for example five months). These additional implications are expected to create a deterrent effect for those who have intention to commit election offences.

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<sup>49</sup> See Report of General Election Supervisory Committee (2004).

## 5.2 Procedural Aspects

This sub-chapter discusses three issues, namely role of electoral management bodies and criminal justice system, burden and standard of proof, and streamlining process of election offence case.

### 5.2.1 Electoral Management Bodies and Criminal Justice System (CJS)

Two pre-requisites for a free and fair election are an independent judiciary, which is crucial to settle electoral disputes, and an honest, competent and non-partisan administration to run elections.<sup>50</sup> In this sub-sub chapter, the roles of electoral management bodies and the court in the settlement of election offences will be described. Before doing so, we must discuss the kind of electoral management bodies existing in each country.

#### 5.2.1.1 Role of Electoral Management Bodies and CJS in Indonesia

The settlement of election offences in criminal justice system started with police investigation, followed by district attorney's prosecution and the court's decision. Reports on election offences are collected and forwarded to the police by the General Election Supervisory Committee (*Panwaslu*). The court's settlement procedure of election offences refers to the *Indonesian Criminal Procedure Code (KUHAP)*, with minor exceptions, as stipulated in *Law Number 12 of 2003*.

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<sup>50</sup> Other pre-requisites would be that there must be a developed party system which would be able to offer alternatives to the electorate and that the politician must be able to accept and be bound by the "rules of the game". Abdul Aziz Bari, *Malaysian Constitution a Critical Introduction*, (Kuala Lumpur: The Other Press, 2003) at 218.

Two most important institutions in Indonesia that perform oversight roles on elections are the General Election Commission (*Komisi Pemilihan Umum/KPU*)<sup>51</sup> and the General Election Supervisory Committee (*Panitia Pengawas Pemilihan Umum/Panwaslu*). Both of them are independent institutions and abide by *Law No. 12 of 2003*. It is important to analyse the tasks and authorities of both institutions in the laws and regulations.<sup>52</sup>

The Constitution only states very briefly that election is held by a General Election Commission, an institution that should be nationwide, permanent and independent.<sup>53</sup> Further provisions regarding elections are stipulated in the law.<sup>54</sup> Two laws which elaborate the tasks and authorities of KPU (as well as *Panwaslu*) are *Law Number 12 of 2003* regarding elections for the members of DPR, DPD, and DPRD and *Law Number 23 of 2003* regarding Presidential Election. However, the recently enacted *Law No. 22 of 2007* holds utmost legal authority to define the tasks and power of these two institutions.

The tasks and power of KPU in regard to election of members of DPR, DPD, and DPRD are: (a) planning the conduct of elections; (b) determining the organisation and procedure at all stages of implementation; (c) coordinating, holding and controlling the conduct of elections at all levels; (d) determining election participants; (e) determining the constituencies, the number of

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<sup>51</sup> The General Election Commission in the 2004 General Elections was different from KPU in the 1999 General Elections, and also different from the General Election Institution (*Lembaga Pemilihan Umum/LPU*) in the 1997 and earlier elections. In 2004 KPU consisted of 11 members who were entirely from independent community and did not come from the political parties. KPU 1999 consisted of the representatives of all political parties participating in the elections plus five government representatives. Meanwhile, LPU was an institution under the Ministry of Home Affairs (MoHA) whose membership much more represented the government elements. The period of duty of the members of KPU is five years. According to *Law No. 10 of 2008*, KPU only consists of seven commissioners.

<sup>52</sup> The General Election Supervisory Committee (Panwaslu) who worked in the 2004 General Elections, had different accountability, structure of members, and process of formation, compared to the 1999 General Elections and the 1997 General Elections and earlier elections. The General Election Supervisory Committee (central) consists of nine members who are formed and accountable to KPU. According to *Law No. 22 of 2007*, for the next election, supervision will be implemented by a permanent institution, namely General Election Supervisory Board (Bawaslu), selected by Parliament (instead of KPU). This institution has seven members at the national level. The selection, mandate, position, and role are provided in *Law No. 22 of 2007*.

<sup>53</sup> The 1945 Constitution Article 22E (5). This provision is the result of the third amendment.

<sup>54</sup> The 1945 Constitution Article 22E (6). This provision is the result of the third amendment.



seats and the candidates for the members of DPR,<sup>55</sup> DPD, Provincial DPRD, and Regency/Municipality DPRD; (f) determining the time, date, procedure of conducting campaign, and voting; (g) determining the election result and announce the elected candidates; (h) evaluating and report election implementation; and performing any other tasks and power as stipulated in the law.<sup>56</sup>

Elaboration of KPU's tasks in an election shows that the institution has no role in the settlement of election offences or the supervision of elections. It is devoted solely to preparation and execution of elections. Apparently, this role is a mandate of the General Election Supervisory Committee (*Panwaslu*). The law stated that to oversee the conduct of elections, KPU should establish *Panwaslu*,<sup>57</sup> the tasks of which are: 1) to supervise the conduct of elections at all stages; 2) to receive report of violation of election's laws and regulations; 3) to settle disputes in the conduct of elections; and 4) to forward the findings and reports which cannot be settled to the authorised institutions, which may be either a different institution of the same level or to higher institution.<sup>58</sup>

Before forwarding the report, *Panwaslu* must review such report. In case criminal elements are found in any of the reports it must be forwarded to the police investigator.<sup>59</sup> Similarly findings that contain criminal elements must be forwarded to the investigator.<sup>60</sup> Therefore, it can be concluded that the election oversight role is vested in the *Panwaslu*, which covers certain duties: obtaining any findings, receiving report, and forwarding findings and

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<sup>55</sup> According to new legislation, *Law No. 10 of 2008*, KPU does not have authority to determine constituency and number of seats of DPR. See the relevant description in chapter three.

<sup>56</sup> *Law Number 12 of 2003*, section 25. See also *Law No. 22 of 2007* section 8 for tasks and authorities of Election Commission and section 74 for tasks and authorities of General Election Supervisory Board. These two sections elaborate in more detail when compared to *Law No. 12 of 2003*.

<sup>57</sup> *Law Number 12 of 2003*, section 17 (11).

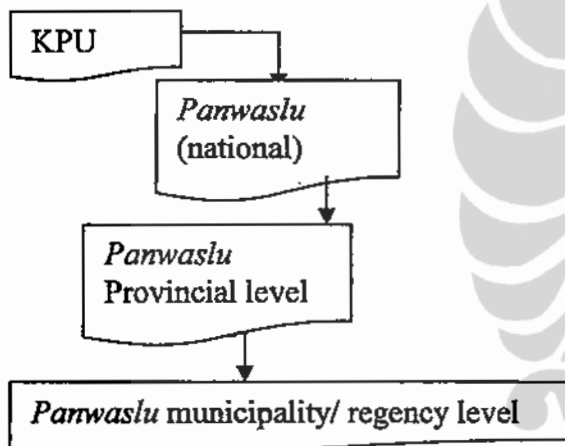
<sup>58</sup> *Law Number 12 of 2003*, section 122 (1).

<sup>59</sup> *Law Number 12 of 2003*, section 128 (5).

<sup>60</sup> *Law Number 12 of 2003*, section 130.

report which have criminal elements to the investigator. Indeed, *Panwaslu* does not have a role in investigating or conducting preliminary investigation. Recognizing the fact that *Panwaslu* has to review report and request additional information from the reporter,<sup>61</sup> in reality, *Panwaslu* has sorted out the findings and report accurately before being forwarded to investigator. Therefore, the investigator will have the cases “ready” to be investigated. We can also conclude that KPU as the main organizer of the conduct of elections does not have any role in the settlement of election offences.

**Figure 5.1**  
**Relation between KPU – *Panwaslu***<sup>62</sup>

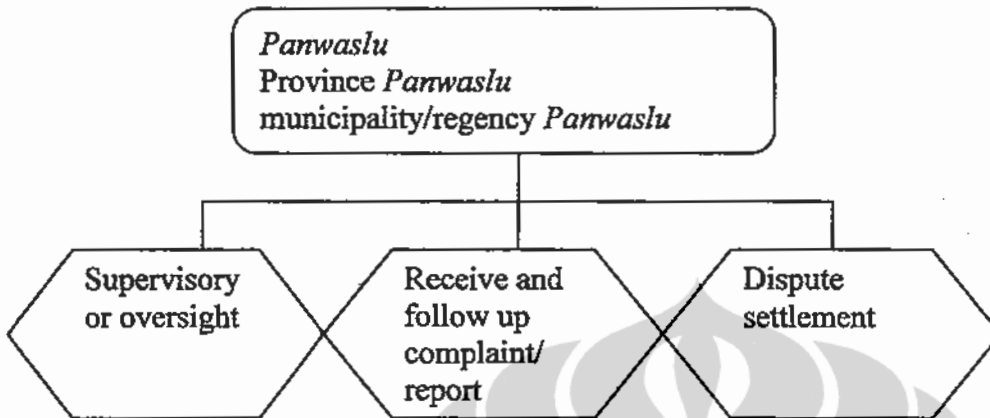


<sup>61</sup> Law Number 12 of 2003, section 128 (3).

<sup>62</sup> Panitia Pengawas Pemilu (General Election Supervisory Committee). *Buku Saku Pedoman Operasional Pengawas Pemilu 2004 (Handbook on 2004 General Election Supervisory Committee)*, (2003) at 9.

Figure 5.2

Work Division in *Panwaslu*<sup>63</sup>



Relations between the duties in election oversight and the institutions which handle election cases can be viewed in the following table.

Table 5.3  
Type of Cases and Institutions in Indonesia

No	Matters	Institution
1	Election offences	District Court, High Court
2	Disputes in the conduct of elections (excluding dispute over election result)	General Election Supervisory Committee
3	Disputes over the elections result	Constitutional Court

The settlement of election offences in the criminal process had two precedents already: 2004 General Elections, which was based on *Law Number 12 of 2003* and 1999 elections period,

<sup>63</sup> Panitia Pengawas Pemilu, id at 13.

which was based on *Law Number 3 of 1999*.<sup>64</sup> In both these two elections, *Panwaslu*, the police, the district attorney and the court hold certain aspects of supervising the conduct of elections.

**Table 5.4**  
**Role of Institutions in the Settlement of Election Offences**

<b>Institution</b>	<b>Task/Authority related to the election offences report</b>	<b>Regulations</b>
General Election Supervisory Committee	Receive report from the reporter, review the report and forward the report to investigator (the Police)	<i>Law Number 12 of 2003</i> sections 122 (1) and 128
Police Department	Review and investigate reports of election offences forwarded by the General Election Committee and submit to public attorney	<i>Law Number 12 of 2003</i> , section 131 and <i>Law Number 8 of 1981</i> (KUHAP)
District Attorney	Prosecute election offences to the District Court based on police investigation	<i>Law Number 12 of 2003</i> , section 131; <i>Law Number 8 of 1981</i> and the <i>Public Attorney Law</i>
District Court	Try the offender in the election offences cases submitted by the public prosecutor	<i>Law Number 8 of 1981</i> ; The <i>Judiciary Authority Law</i> ; The <i>General Court Law</i>

*Panwaslu*<sup>65</sup> is a special electoral organ in Indonesia. In the settlement of criminal cases, this institution actually does not have any authority as a law enforcement agency, as it cannot investigate or prosecute election offences. This institution only functions to receive reports<sup>66</sup> and

<sup>64</sup> It is important to note that the period of 1971-1997 elections is not to be discussed in this thesis since the New Order's elections were indeed held in a less democratic political manner, therefore, the supervision and enforcement of the law was not carried out in an objective manner, since they are in favour of the ruling party.

<sup>65</sup> The General Election Supervisory Committee (*Panwaslu*) has existed since the 1982 General Elections as the government response toward public criticism which consider the elections unfair, but since the 1982 General Elections up to the 1997 General Elections, its membership is considered to side the government party since its composition was consisted of bureaucrats elements as well as law enforcer elements (which at that time are the government authority apparatus). Meanwhile, the existence of the representatives of the political parties (at that time was PPP and PDI) was merely a supplement to make it appeared to be more neutral.

<sup>66</sup> The report comes from the citizen having the right to vote, the election observers, and the election participants. *Law Number 12 of 2003* section 127 (2).

determine whether they contained criminal element, which should be forwarded to the police investigator.<sup>67</sup>

Unlike any other offence settlement, only *Panwaslu* is mandated by the *Law No. 12 of 2003* to accept reports of election violations and to forward them to the police. However, *Law Number 3 of 1999* and *Law Number 12 of 2003* have no explanation of a scenario in which the Police directly received reports of election offences.<sup>68</sup> In practice, the police usually recommend the reporter to go to *Panwaslu*, since election offences are considered as a *lex specialis* of general offences. Otherwise, the police should notify *Panwaslu* that the police are handling a case they found directly. In the 2004 General Elections, *Panwaslu* clarified reports (especially to the reporting party), but could not investigate them.<sup>69</sup> Upon receiving such reports from the Committee, the police would investigate them.

Even though *Panwaslu* cannot settle election offences, or even to investigate and prosecute election offences, it does not mean that its role is insignificant in the settlement of election offences. According to the legal framework on elections, *Panwaslu* is at “the front gate” for the acceptance of reports from election participants, observers and adult citizens.

*Panwaslu* will pass on sorted reports to the police. It is the task and authority of the police to investigate them.<sup>70</sup> In the settlement of election offences, actually the task of the Police Department was greatly assisted since the cases which they received were already sorted by the *Panwaslu*. This committee only delivered cases, if they already had a “reasonable basis” or initial pieces of evidence of the occurrence of offences. Meanwhile, reports containing misunderstanding, misinformation, and misassumption were completed at the level of *Panwaslu*.

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<sup>67</sup> See also section 74 (a) *Law Number 22 of 2007*.

<sup>68</sup> In KUHAP, the Police can accept report of offences directly from the public.

<sup>69</sup> In the 1999 General Elections, such stipulation did not exist.

<sup>70</sup> This is in agreement with provisions in *Law Number 8 of 1981*. According to section 131 (1) of *Law Number 12 of 2003* it applies to investigation of offences in the *Law No.12 of 2003*.

With regard to the settlement of election offences in the criminal process during the 2004 General Elections, *Panwaslu* has recorded that there were 1,022 election offence cases that were already decided by criminal courts all over Indonesia. It is such an incredible figure, compared to that of the 1999 General Elections where only five election offences cases were decided by the criminal courts.<sup>71</sup>

Nevertheless, from *Panwaslu* point of view, the effectiveness of handling election offences reports need to be strengthened. During the 2004 legislative elections, *Panwaslu* received 3,153 election offences reports (and findings). As many as 2,413 cases were then delivered to police investigators. Out of them, police only forward 1,253 cases to the public attorney. The effectiveness percentage of the handling of all reports by *Panwaslu* is 76.53 percent.<sup>72</sup> The problems that hampered effectiveness are, among others, insufficient number of *Panwaslu* members and very limited authority of the institution in terms of inquiring of witnesses and evidence gathering.

The settlement of election offences in Indonesia is under the *Law No.12 of 2003*<sup>73</sup> and the *Criminal Procedural Code*.<sup>74</sup> In *Law No. 12 of 2003*, the settlement of election offences is preceded by acceptance of reports of election law violations from the public by *Panwaslu*. Such reports<sup>75</sup> should contain the name and address of the reporter, time and place of violation, names and address of the violator, names and address of the witnesses as well as the chronology of such

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<sup>71</sup> Panitia Pengawas Pemilihan Umum (General Election Supervisory Committee), op.cit., 413.

<sup>72</sup> Id at 413-414.

<sup>73</sup> In the Parliamentary Elections, it is stipulated in *Law Number 12 of 2003*.

<sup>74</sup> Section 131 sub section (1) of *Law Number 12 of 2003* states that: "Any provisions regarding investigation and the prosecution over offences stipulated in this law apply to *Law Number 8 of 1981* regarding Criminal Procedural Law, except otherwise stipulated in this law."

<sup>75</sup> The report being submitted is election violation report/ complaint. In the context of criminal law, a report is a notification delivered by anyone (who due to his right or obligation based on the Law) to the authorised official that an offence is committed or being committed or assumed to be committed. Section 1 (24) of *Law Number 8 of 1981*.

incident.<sup>76</sup> This report may come from members of the community who have the right to vote, from election observers, and from election participants.<sup>77</sup>

The reports should be delivered at least seven days after the violation occurred.<sup>78</sup> Upon receiving report, *Panwaslu* should conduct a review.<sup>79</sup> Administrative violation must be forwarded to the General Election Commission,<sup>80</sup> while an election offence must be forwarded to a police investigator.<sup>81</sup> Meanwhile, an election dispute (outside dispute of election result) must be settled by *Panwaslu*.<sup>82</sup>

The data elaborated above showed that the number of settlements of election offences during 1999 General Elections at the Police level was quite significant. Out of 236 files accepted from *Panwaslu*, there were only five cases which were followed up in the courts. As many as 216 reports never made their way to trial albeit were investigated by the police. It means that settlement of reports (submitted by *Panwaslu*) at the Police level was 91.53 percent. Such a large number of cases were considered as having insufficient evidence to be presented in court. The Police settled such reports by using their discretion to terminate investigation.

At the 2004 General Elections, the situation was little bit different. From 2,413 election offence reports submitted by *Panwaslu* to the police, 1,253 among others were submitted to public prosecutor. This means as a whole the effectiveness to handle election offences by the police was equal to 51.93 percent. From 1,253 cases, which were submitted to public prosecutor

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<sup>76</sup> Law Number 12 of 2003, section 127 (3).

<sup>77</sup> Law Number 12 of 2003, section 127 (2). The party which delivers the report in this case is different from offences in general. The participants in the elections for the members of DPR and DPRD are political parties, while the participants in the elections for the members of DPD are independent candidates.

<sup>78</sup> Law Number 12 of 2003, section 127 (4).

<sup>79</sup> Based on Law No. 12 of 2003 (especially in Chapter XIV), violations can be classified into three categories, i.e.: (1) administrative violation; (2) election offences; and (3) election disputes.

<sup>80</sup> Law Number 12 of 2003, sections 122 (1) and 130.

<sup>81</sup> Law Number 12 of 2003, sections 130 and section 128 (5).

<sup>82</sup> Law Number 12 of 2003, sections 122 (1), 128 (4) and 129. The election disputes here are different from disputes which become the jurisdiction of the Constitutional Court (dispute of elections result).

only 1,065 were tried by the courts, so that effectiveness of handling election case by the public prosecutor was equal to 84.1percent. In most cases, the defendants were found guilty by the judges.<sup>83</sup>

There are several reasons why settlement of election offences, either by *Panwaslu*, police, or public prosecutor has not been effective. First, coordination between *Panwaslu* and the police has not yet been conducted smoothly. Secondly, there were insufficient evidence to prove a case. There are many reasons for lack of evidence. It may be because the main perpetrators disappear within 30 days. Third, different institutions hold different perceptions concerning one or more elements of a particular offence, for instance perception about bribery or about campaign beyond the campaign period. Fourth, the application of discretionary power not to follow up certain cases for some reasons, e.g. possibility of judicial process will bring about social chaos, removal of an offender from candidacy by Election Commission which rendered prosecution futile.<sup>84</sup>

#### **5.2.1.2 Role of Electoral Management Bodies and CJS in Malaysia**

In Malaysia, the Malaysian Election Commission (*Suruhanjaya Pilihanraya*) is the sole electoral management body in the country. Unlike Indonesia that only recently established election commission,<sup>85</sup> Malaysia recognised an election commission in the Constitution much earlier. The Federal Constitution Part VIII has provided nine provisions (Articles 113–120), including: (1) the appointment of an election commission, 2) principles governing delimitation of

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<sup>83</sup> Panitia Pengawas Pemilihan Umum (General Election Supervisory Committee), loc.cit.

<sup>84</sup> Ibid.

<sup>85</sup> Through the third Amendment to the Constitution, November 2001.



constituencies, (3) registration of voters and so on.<sup>86</sup> In the Federal Constitution, the Malaysian Election Commission is more explicitly elaborated when compared the Indonesian Election Commission. Article 113, for example, states that:

“There will be an Election Commission, to be constituted in accordance with Article 114, which, subject to the provisions of federal law, will conduct elections to the House of Representatives and the Legislative Assemblies of the States and prepare and revise electoral rolls for such elections.”

Even though the Federal Constitution of Malaysia does not use the term independent, the Election Commission should be an independent body with the freedom to discharge its constitutional functions or power without fear or favour on any party, particularly the ruling party.<sup>87</sup>

The constitution mandates the Election Commission, *inter alia*, to conduct elections and generate rules for the purpose of its functions. The rules will have effect subject to the provisions of federal law. According to the *Elections Act 1958*, the Election Commission may, with the approval of the *Yang diPertuan Agong* make regulations for the registration of electors and for all matters incidental thereto and also make regulations for the conduct of elections to the House of Representative and the Legislative Assemblies, and for all matters incidental thereto.<sup>88</sup>

The Election Commission is very important for it is part of the machinery that ensures the conduct of free and fair elections. The authority to organise elections rests on this Commission. The Federal Constitution has laid down two duties for the Election Commission namely (i) to

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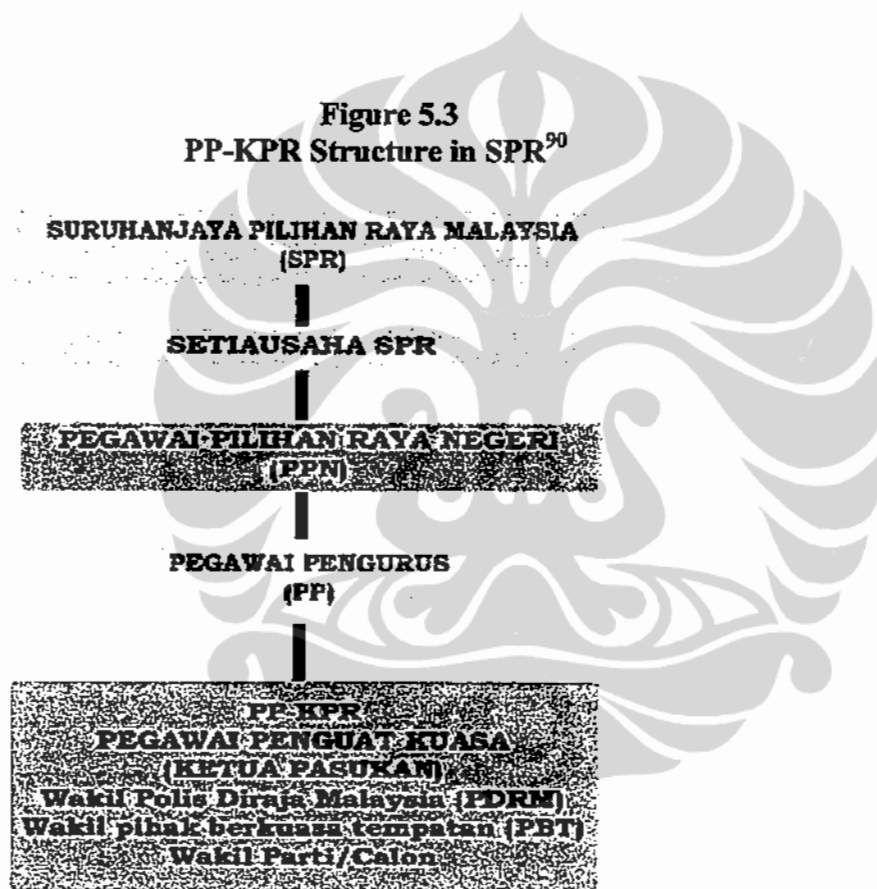
<sup>86</sup> The Federal Constitution, in Article 120, also provides the manner direct elections to the Senate are to be conducted.

<sup>87</sup> Regarding this matter, Rachagan points out that: “as important as the foregoing provisions in securing the independence of the Election Commission are the provisions relating to the appointment of the Election Commission itself. These provide that the Election Commission ‘will be appointed by the *Yang diPertuan Agong* after consultation with the Conference of Rulers’ and that, in appointing members of the Election Commission, the *Yang diPertuan Agong* will have regard to the importance of securing an Election Commission which enjoys public confidence.” See Rachagan, Sothi, *Law and the Electoral Process in Malaysia*, (Kuala Lumpur: University of Malaya Press, 1993) at 28–29.

<sup>88</sup> Rachagan, *id* at 37-38.

conduct elections for both parliament and state legislative assemblies and (ii) to prepare and revise electoral rolls for those elections.

For particular violation that occurred during a campaign period, there is a special institution granted with an authority to settle such violation, namely Enforcement Team of Election Campaign or *Pasukan Penguat Kuasa Kempen Pilihan Raya* (PP-KPR). Figure 5.3 shows the position of the team in the Election Commission.<sup>89</sup>



**Note :**

- Suruhanjaya Pilihan Raya Malaysia (Malaysian Election Commission)
- Setiausaha SPR (Election Commission Secretary)

<sup>89</sup> <http://www.spr.gov.my/PP-KPR.htm>

<sup>90</sup> Source : <http://www.spr.gov.my/PP-KPR.htm>

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|--|
| <ul style="list-style-type: none"> <li>- Pegawai Pilihan Raya Negeri (State Election Officials)</li> <li>- PP-KPR/ Pegawai Penguat Kuasa Kempen Pilihanraya (Enforcement Team of Election Campaign)</li> </ul> |
|--|

The membership of each PP-KPR consists of Enforcement Officers (*Pegawai Penguat Kuasa*) who are Election Commission Officials (*Pegawai Suruhanjaya Pilihan Raya*) occupying the position as chairman of the respective PP-KPR, Malaysian Police representative [*wakil Polis DiRaja Malaysia* (PDRM)], Local Authority representative [*wakil Pihak Berkuasa Tempatan* (PBT)], and the representatives of political parties appointed in writing by the candidate or his/her election agent.<sup>91</sup>

The functions of Enforcement Officials (*pasukan penguat kuasa*) are: (1) to conduct supervision and observation over the campaign activities to ensure that the campaign is conducted in accordance with the law; (2) to clear the area, which is under its supervising authority from campaign equipments, which are not in accordance with the law. Such campaign equipments may be in the form of posters, banners, flags, etc; (3) to stop speech or oration relating to the election campaign which is not in accordance with or contrary to the *Election Offences Act*; (4) to ensure that election campaign activities are conducted in accordance to the provisions of the *Election Offences Act*.<sup>92</sup>

The procedures that must be observed by PP-KPR in performing its duties are:<sup>93</sup> (1) work in one group when conducting continuous supervision in the election (*pilihan raya*) area, which is under its authority. The schedule to conduct supervision is determined by the Chairman of PP-KPR; (2) make notes in the PP-KPR Minutes of Observation and Enforcement ("*Borang Pemantauan dan Penguatkuasaan PP-KPR*") regarding the mistakes or violations of political

<sup>91</sup> Ibid.

<sup>92</sup> Section 27 E of *Election Offences Act 1954*.

<sup>93</sup> <http://www.spr.gov.my/PP-KPR.htm>

parties during campaigning period; (3) record speech or take picture as evidence if necessary; (4) chairman of PP-KPR must coordinate with all of the members before conducting an action in order to reach an agreement regarding the action to be taken; (5) PP-KPR will perform the mutually agreed action; (6) if there are any violation cases and PP-KPR cannot decide them by itself then PP-KPR may request assistance and advice from Managing Official (*Pegawai Pengurus*) and State Election Official (*Pegawai Pilihan Raya Negeri*); (7) make notes regarding the decisions taken; (8) if necessary, the Chairman of PP-KPR may prepare report to the police to follow up on occurring violations; (9) chairman of PP-KPR must continue coordinating with the police in all election areas with the purpose of assisting the performance of PP-KPR's duties, for example, to follow up the violation committed during campaigning period.

Based on the above description, Malaysia Election Commission's role in the settlement of offences is in receiving or sorting out report and forwarding it to the investigator. This role is performed by one special component in SPR, namely PP-KPR. Its role is to supervise election campaign, and the team could make report to the police to follow up on the violation. The Chief of PP-KPR must coordinate with the police in order to assist the role of PP-KPR to follow up the report.

This is very similar to *Panwaslu* in Indonesia. There are some differences, however, in terms of status and position. *Panwaslu* is legally formed by the Election Commission but separated from the commission;<sup>94</sup> PP-KPR is part of Election Commission. Moreover, *Panwaslu* performs oversight on all stages of election, while PP-KPR supervised campaign period. Furthermore, during campaign period *Panwaslu* is merely authorised to supervise and send report either to Election Commission or the police, while PP-KPR could clear the area from

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<sup>94</sup> In a new legislation, *Law No. 10 of 2008*, *Panwaslu* became a permanent and independent body outside the Election Commission, selected by parliament.

campaign equipments which are not in accordance with the law and even stop speech or oration which is not in accordance with or contrary to law.

Another difference is related to the composition of *Panwaslu* and PP-KPR. While PP-KPR comprises of government staff and political parties, representatives of police and staff of Election Commission, *Panwaslu* does not have government and political party elements. In spite of these differences, both of them could not investigate or even prosecute election offences.

With regard to election judge, unlike Indonesian Constitution, the Federal Constitution of Malaysia clearly state that there should be an Election Judge in Malaysia who has authority to settle election petitions. It is obvious that this Election Court does not handle offences based on criminal proceeding; instead it handles them as a civil case. The criminal proceeding to settle election offences is conducted by the Sessions Court. If we divide the matters in elections along the lines of institutions handling or settling them, it can be viewed in the following table.

**Table 5.5**  
**Type of Cases and Institutions in Malaysia**

No.	Matters	Institutions
1	Election offences	Sessions Court
2	Disputes over the Election Result	Election Judge in the High Court

The settlement of election offences is the same as the settlement for other offences in which the police conduct an investigation<sup>95</sup> and the public prosecutor conducts the prosecution. The prosecution authority is not granted to the electoral management body. As for bribery, the

<sup>95</sup> In the 10<sup>th</sup> General Elections, the Inspector General of Police (*Ketua Polis Negara*) stated that his department conducted investigation related to 17 bribery cases of giving money and material consideration to influence voters in the elections to the Anti-Corruption Agency (*Badan Pencegah Rasuah/BPR*).

Anti-Corruption Agency (*Badan Pencegah Rasuah/BPR*) has a role.<sup>96</sup> The BPR is granted with authority to strengthen the law, among others, through the *Election Offences Act*.<sup>97</sup> The court which settles election offences is the Sessions Court, instead of the Election Court or the Election Judge.

The Anti-Corruption Agency (*Badan Pencegah Rasuah/BPR*) performs an important task to supervise the election campaign. The BPR will investigate every report with elements of bribery, corruption and abuse of authority during the campaign period. BPR's concern is on two main activities of bribery, i.e., giving bribe to the voters in order to vote for a certain candidate and giving bribe to the candidates from the opposing political parties in order to withdraw from the elections. Compared to the Indonesian legal framework, Indonesia's Corruption Eradication Commission (KPK) does not have such role in an election process. The KPK will investigate and prosecute only if the conduct is violating the Anti-Corruption Law (*Law No. 31 of 1999 and Law No 20 of 2001*).<sup>98</sup>

In Malaysia, the law affirms that a court can try election offences in criminal proceeding. Section 11 (1) of the *Election Offences Acts 1954*, for example, states that every person who commits corrupt practice will be tried by the Sessions Court. This Act also mentioned that several actions are categorised as seizable offences<sup>99</sup> within the meaning of the *Criminal*

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<sup>96</sup> Wan Nik Wan Yussof, *Demokrasi Rakyat Terengganu Menolak Parti Islam*, (Kelantan Darulnaim: Political Analysis and Strategic Development, 2004) at 69.

<sup>97</sup> Kamaruddin M. Said, *Belajar dari Sistem Pemberantasan Korupsi di Malaysia* [Learn from Anti Corruption System in Malaysia], in *Korupsi Musuh Bersama* [Corruption the Common Enemy], (Eds) Musni Umar dan Syukri Ilyas, (Jakarta: Lembaga Pencegah Korupsi, 2004) at 51.

<sup>98</sup> The controversial cases in the 2004 General Elections handled by the KPK were corruption committed by some Election Commissioners (including its chairperson) who violated Law on Anti-Corruption related to election procurement.

<sup>99</sup> Actions categorised as seizable offences herein are (a) commits the offence of personation, or aids, abets, counsels or procure the commission of the offence of personation; and (b) commits the offence of treating, undue influence or bribery. Section 11 sub section (1) (a) and (b). Seizable offences according to criminal procedure code means an offence for which a police officer may ordinarily arrest without a warrant."

*Procedure Code*.<sup>100</sup> Criminal Offences in Malaysia are not classified as felonies or misdemeanors. The crimes are distinguished between seizable offences and non-seizable offences.

The Sessions Court is the highest within the rank of subordinate courts in Malaysia. Its criminal jurisdiction extends to all offences other than offences punishable with death under sections 63-64 of the *Subordinate Courts Act 1948*.<sup>101</sup> Therefore, election offences are clearly part of criminal jurisdiction of the Sessions Court. Meanwhile, the institution settling election offences as the ground of election petitions is the Election Judge or the Election Court.

In the settlement through criminal court, the institutions having the role, as in other offences, are the Police and the Public Prosecutor, and certainly the court. There are several election offences which are settled through the criminal court since the 1955 Elections. As has been described, the Malaysian *Criminal Procedural Code* affirms that all offences under the *Penal Code* will be investigated and tried according to the provisions of the *Criminal Procedure Code*; and all offences under any other law will be investigated and tried according to the same provisions.<sup>102</sup>

In Malaysian election legal framework, it is stipulated that criminal proceeding to settle election offences refers to the *Criminal Procedure Code* or the settlement through Malaysian criminal justice system based on the prevailing criminal procedural law. This can be viewed in section 6 (2) in its relevance to “electoral offences” which states that, “Every offence under this part will be a seizable offence within the meaning of the *Criminal Procedure Code*.”<sup>103</sup>

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<sup>100</sup> Section 11 (1) *Election Offences Act 1954*.

<sup>101</sup> Nuraisyah Chua Abdullah, op.cit.,25.

<sup>102</sup> *The Criminal Procedure Code (Act 593)*, section 3.

<sup>103</sup> *Malaysia, Election Offences Act 1954*, part II, section 6 (2).

Meanwhile, in its relevance to the “corrupt practices”, it is stated “...Offences under Paragraphs (a) and (b) will be a seizable offence within the meaning of the *Criminal Procedure Code*.”<sup>104</sup> Moreover, Malaysian criminal procedure law states that: “All offences under the *Penal Code* will be inquired into and tried according to the provisions of the *Criminal Procedure Code*; and all offences under any other law will be inquired into and tried according to the same provisions.”<sup>105</sup>

Unlike Indonesian election legal framework which stipulates specific rules for election offences in reporting offences, investigation, prosecution and examination in courts (which is different from the settlement of other offences), the *Election Offences Act 1954* does not recognise such exclusionary provisions. The process of election offences as a criminal case refers to general settlement process of offences as stipulated in the *Criminal Procedure Code*.

To sum up, Malaysia recognises no difference between settlement of election offences and settlement of other criminal offences. The investigation is conducted by the Police and Prosecution is conducted by the Public Prosecutor, instead of Electoral Management Body. For bribery cases, the Anti-Corruption Agency (*Badan Pencegah Rasuah/BPR*) also has a role.<sup>106</sup> The BPR is given an authority to strengthen the law, among others, through the *Election Offences Act*.<sup>107</sup>

The court settling election offences is the Sessions Court, instead of the Election Court or the Election Judge. At the end of such process, if the offence is proven, the court will impose criminal sanction on the defendant in accordance with punishable criminal sanction. If a

<sup>104</sup> *Malaysia, Election Offences Act 1954*, Part III, section 11 (1).

<sup>105</sup> *Criminal Procedure Code* (Act 593), section 3.

<sup>106</sup> The Anti Corruption Agency (*Badan Pencegah Rasuah/BPR*) is given an important task to supervise the elections campaign. BPR will investigate every report which contains elements of bribery, corruption and abuse of authority during campaign period. The supervision of BPR rests on two main activities of elections bribery, i.e., giving bribe to the voters to vote a certain candidate and giving bribe to a candidate from the opposing political party in order to withdraw from the election. Wan Nik Wan Yussof, *op.cit.*, 69.

<sup>107</sup> Kamaruddin M. Said, *loc.cit.*



successful candidate for parliament is proven to be guilty based on such criminal process, the relevant elected representative will be removed from his seat. This is affirmed in the *Election Offences Act 1954*, especially in section 31 (1): "The election of a candidate at any election is avoided by his conviction for any corrupt or illegal practice at such election." Section 31 (2) provides the rule regarding the process after the judge declare that an offence is proven, i.e.:

"Within fourteen days of the conviction by a Sessions Court of a candidate for any corrupt or illegal practice at an election, the Sessions Court Judge or the Registrar of the Sessions Court will certify the Court's determination – (a) to the Election Commission in the case of an election of a person to be a member of the *Dewan Rakyat*, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorised to conduct; or (b) in the case of any other election, to the State Authority. " (Underline added)

Therefore, it is very clear that the settlement of election offences through the criminal court results in criminal sanction as well as cancellation of seat in parliament. It is important to note that the Sessions Court examine election offences through the criminal procedural proces.

The Sessions Court is the highest of the subordinate courts in Malaysia. The Sessions Courts has jurisdiction over both criminal and civil cases. In regard to criminal cases, this court's jurisdiction excludes those cases that are punishable by death. Its criminal jurisdiction extends to offences with a maximum punishment of ten years and certain specified serious offences under the *Penal Code*. Other offences may be included if the Public Prosecutor applies to the Court to try the offence and the accused consents provided they are not offences punishable with death or life imprisonment.<sup>108</sup>

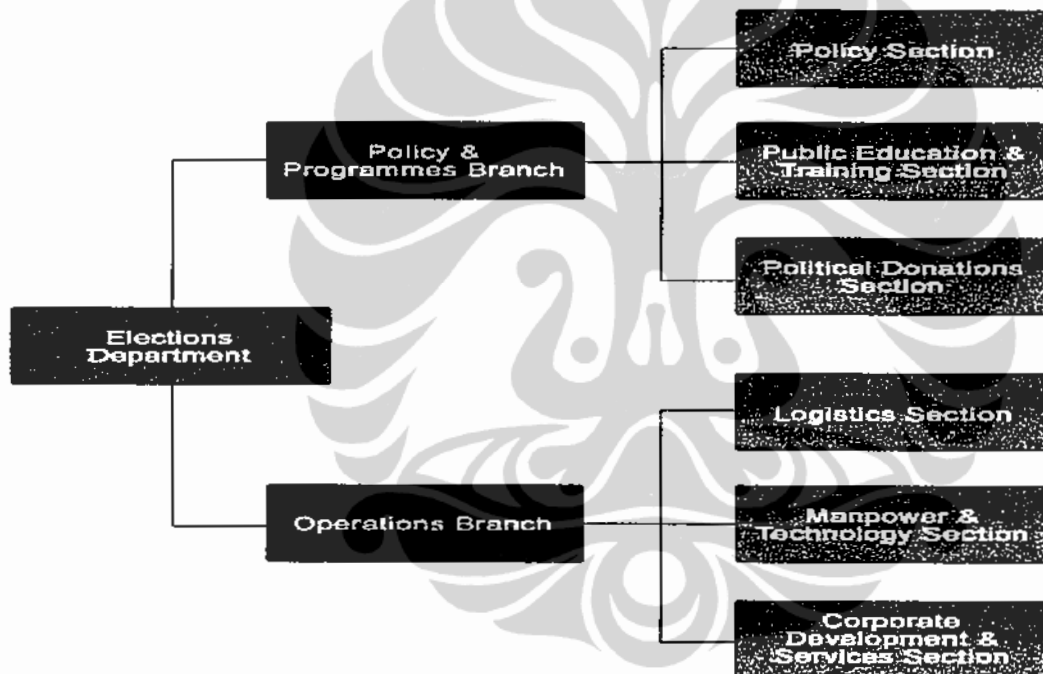
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<sup>108</sup> Nuraisyah Chua Abdullah, op.cit., 25; Wu Min Aun, *An Introduction to the Malaysian Legal System* (Kuala Lumpur : Heinemann Educational Books (Asia) Ltd, 1975) at 69; Jayum A Jawan, op.cit., 138.

### 5.2.1.3 Role of Electoral Management Body and CJS in Singapore

Singapore has no institution with more or less the same authority with the Indonesian General Election Supervisory Committee (Panwaslu) or PP-PKR in Malaysia. The Elections Department is recognised in Singapore's Constitution. However, there is no role of the Elections Department in the settlement of offences, which includes receiving or sorting out reports and forwarding it to the investigator.

**Figure 5.4  
Structure of ELD**



Like Malaysia, Singapore also recognises the office of an Election Judge. The judge is not authorised to settle election offences in a criminal proceeding; instead, it can settle them through election petition where one of the grounds to submit a petition can be in the form of violation of election offences.<sup>109</sup> The criminal proceeding to settle election offences is conducted

<sup>109</sup> This will be discussed in chapter six.

by the court, i.e., the District Court. If we divide the matters in the election along with the institutions handling or settling them, it can be viewed in the following table.

**Table 5.6**  
**Type of Cases and Institution in Singapore**

No	Matters	Institutions
1	Election offences	District Court
2	Disputes over the election result	Election Judge in the High Court

Observed from the institution who settles it, the settlement of election offences as criminal cases in Singapore is conducted by a court, either District Court or Magistrate Court for certain violations (for example, regarding badges, etc.). Meanwhile the institution who settles election petition is the Election Judge in the High Court.

The Singapore legal system does not differentiate settlement of election offences from settlement of other offences. Just like any other offences, the Police conduct the investigation and the prosecution is conducted by the Public Prosecutor and not by an electoral management body. As explained above, the Singapore criminal procedural law affirms that all offences under the *Penal Code* will be inquired into and tried according to the provisions of the *Criminal Procedure Code*; and all offences under any other law will be inquired into and tried according to the same provisions.<sup>110</sup> This provision is exactly identical to section 3 of Malaysian *Criminal Procedure Code* (Act 593).

<sup>110</sup> The Singapore *Criminal Procedural Code*, section 3.

The Court that should examine election offence is the District Court (not the Election Court or the Election Judge). In relation to corrupt practice, the law states that anyone committing a corrupt practice will be tried in a District Court.<sup>111</sup>

It should be noted that the administration of criminal justice in Singapore will be as follows: (a) the High Court; (b) District Court; and (c) Magistrates' Court. The District Court has jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 years or which are punishable with fine only.<sup>112</sup>

For election offences related to badges, symbols, etc., prohibited on polling day as stipulated in section 77, any police officer may arrest without warrant any person offending in his view against subsection (1) and take him as soon as practicable before a Magistrate's Court<sup>113</sup> to be dealt with according to law.<sup>114</sup> All the same with the prohibition of canvassing on polling day as stipulated in section 80, then any police officer may arrest without warrant any person

<sup>111</sup> *Parliamentary Election Act*, section 61(1)

<sup>112</sup> *Singapore Criminal Procedure Code*, section 7 of a District Court may try any offence, other than an offence punishable by death, if :

- (a) The Public Prosecutor applies to such Court to try such offence; and
- (b) The accused consents, or, if more than one are charged together with the same offence, all such accused consent to be tried by such Court.
- (3) Every District Court will have in the exercise of its jurisdiction all the powers which belong to and are exercised by a Magistrate's Court.

<sup>113</sup> *Singapore Criminal Procedure Code*, section 8 (1). Magistrate's Court will have cognisance of and power and authority to —

- (a) Hear, try, determine and dispose of in a summary way prosecutions for offences for which the maximum term of imprisonment provided by law does not exceed 3 years or which are punishable with fine only;
  - (b) Inquire into offences committed or alleged to have been committed with a view to committal for trial by the High Court;
  - (c) Inquire into complaints of offences and summon and examine witnesses touching such offences, and summon and apprehend and issue warrants for the apprehension of criminals and offenders, and deal with them according to law;
  - (d) Issue warrants to search or to cause to be searched places wherein any stolen goods or any goods, sections or things with which or in respect of which any offence has been committed are alleged to be kept or concealed, and require persons to furnish security for the peace or for their good behaviour according to law; and
  - (e) Do all other matters and things which a Magistrate's Court is empowered to do by any Act.
- (2) The jurisdiction and powers conferred upon any Magistrate's Court under subsection (1) (a) and (b) will be exercised by any Magistrate, sitting in a court house of such Magistrate's Court.
  - (3) The jurisdiction and powers conferred upon a Magistrate's Court under subsection (1) (c), (d) and (e) may be exercised by a Magistrate at any place within Singapore.

<sup>114</sup> *Parliamentary Election Act*, section 77 (3).

offending in his view against subsection (1) and take him as soon as practicable before a Magistrate's Court to be dealt with according to law.<sup>115</sup>

The difference between criminal and civil proceedings is that a crime is regarded as an offence against society so that the state is directly interested. In Singapore, even when a private citizen files a complaint, the prosecution is still in the name of the State.<sup>116</sup> Unlike civil actions, one cannot go to a criminal court, unless the State wishes to do so. A criminal prosecution usually begins with lodging what is known as a first information report. In serious cases or in cases where the police feel that they should institute proceedings themselves, the prosecution will be in the hands of the Court Prosecuting Officers (police officers) or in the hands of a deputy public prosecutor. Only when investigations are complete will the case be sent to a court. Once investigations are complete or the authorities feel there is no further need for investigation, steps will be taken to send the accused for trial.<sup>117</sup>

The settlement of election offences is conducted by the District Court (and for some cases by the Magistrate Court). Unlike Indonesia, in this country, there is no institution identical to the General Election Supervisory Committee, therefore, election offences cases are handled just like any other offences.

In the *Parliamentary Election Act* it is stipulated that the criminal procedure to handle election offences is referring to the *Criminal Procedure Code*. According to this law, election offences, especially in section 55, are categorised as a seizable offence within the meaning of the

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<sup>115</sup> *Parliamentary Election Act*, section 80 (4).

<sup>116</sup> Myint Soe, *The General Principles of Singapore Law*, (Singapore: The Institute of Banking and Finance, 1978) at 111.

<sup>117</sup> *Id* at 121-122.

*Criminal Procedure Code*.<sup>118</sup> In relation to the personation, it is also stated that the offence of personation will be a seizable offence within the meaning of the *Criminal Procedure Code*.<sup>119</sup>

Prosecutions for corrupt practices except for those defined in subsection (1) (d) and (e) will not be conducted without the sanction of the Public Prosecutor.<sup>120</sup> Nothing in this section will prevent any police officer from exercising the powers conferred upon him by Chapter XIII of the *Criminal Procedure Code* (Cap. 68) in the case of non-seizable offences or from exercising his powers to prevent a continuance of any corrupt practice.<sup>121</sup>

The applicability of the Singapore *Criminal Procedure Code* to settle election offences, besides reflected in the provisions in the *Parliamentary Election Act*, is also provided in the provisions of the Singapore *Criminal Procedure Code*, which states:

“All offences under the *Penal Code* will be inquired into and tried according to the provisions of this Code; and all offences under any other law will be inquired into and tried according to the same provisions, subject, however, to any written law for the time being in force regulating the manner or place of inquiring into or trying those offences.”<sup>122</sup>

There is no specific rule for election offences in a criminal process for instance, in the receiving of report, investigation, prosecution and examination in court (which is different from the settlement of other offences). The Singapore's *Parliamentary Election Act* completely referred to the settlement process of offences provided by the *Criminal Procedure Code*. There is no difference in the settlement of election offences to the settlement of other offences. The Police conduct investigation and the Prosecution is conducted by the Public Prosecutor and not by the electoral management body or electoral department. The court examining election offences is the District Court, and not the Election Court or the Election Judge. In its relation to

<sup>118</sup> *Parliamentary Election Act*, section 55 (3)

<sup>119</sup> *Parliamentary Election Act*, section 57 (2)

<sup>120</sup> *Parliamentary Election Act*, section 61 (3)

<sup>121</sup> *Parliamentary Election Act*, section 61 (4)

<sup>122</sup> *The Singapore Criminal Procedure Code*, section 3.

corrupt practice, the law states that anyone committing a corrupt practice will be tried by a District Court.<sup>123</sup>

As stipulated in section 77F, on polling day badges, symbols, etc., are prohibited. Therefore, police officers may arrest without warrant anyone who is violating this provision and take him/her as soon as possible before a Magistrate's Court to be dealt with according to law.<sup>124</sup> The same goes for canvassing on polling day which is prohibited by section 80.<sup>125</sup>

#### **5.2.1.4 Role of Electoral Management Body and CJS in the Philippines**

Commission on Elections of the Philippines or Comelec composed of a Chairman and six Commissioners who should be native citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective positions in the immediately preceding elections. However, a majority thereof, including the Chairperson, will be members of the Philippines Bar who have been engaged in the practice of law for at least ten years.<sup>126</sup>

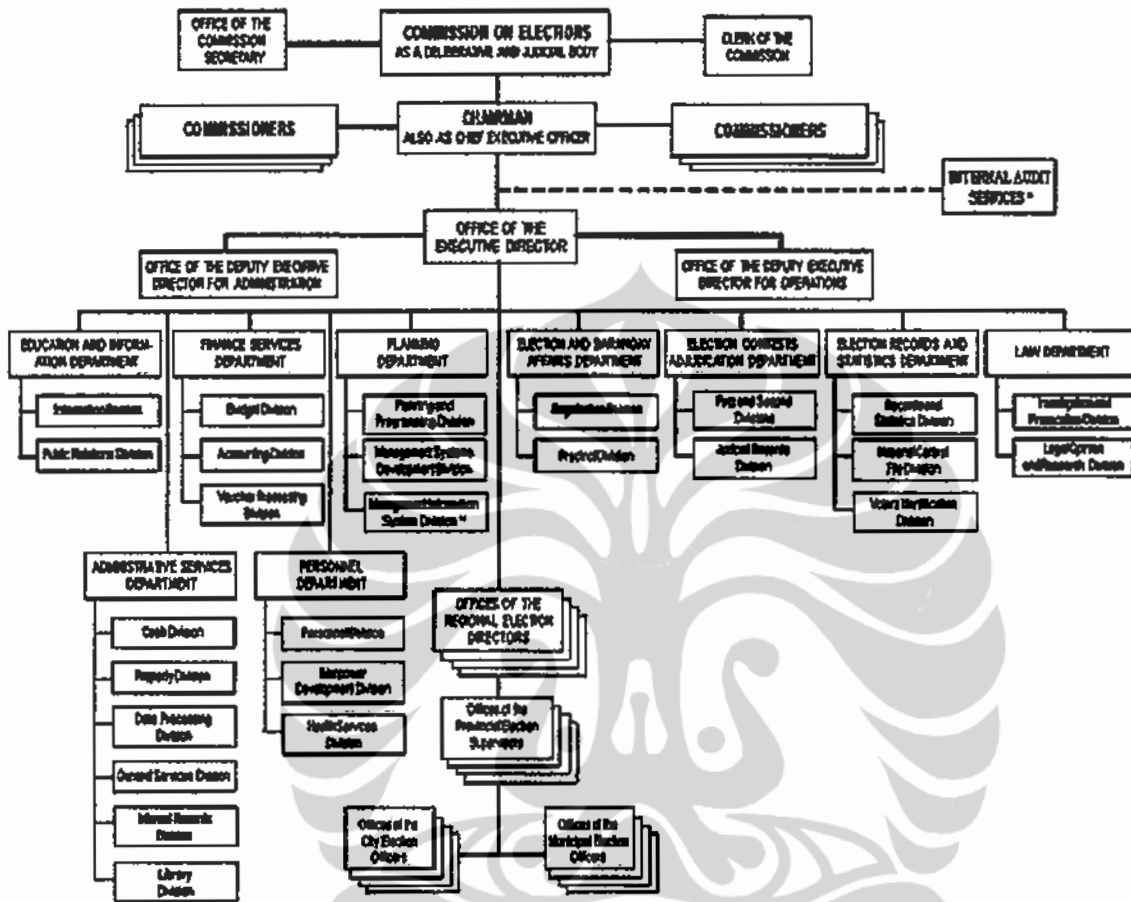
<sup>123</sup> *Parliamentary Election Act*, section 61 (1).

<sup>124</sup> *Parliamentary Election Act*, section 77 (3).

<sup>125</sup> *Parliamentary Election Act*, section 80 (4).

<sup>126</sup> Constitution of the Republic of the Philippines 1987, section 1 paragraph (1), section 1 paragraph (2): the Chairman and the Commissioners will be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members will hold office for seven years, two Members for five years, and the last members for three years, without reappointment. Appointment to any vacancy will be only for the unexpired term of the predecessor. In no case will any member be appointed or designated in a temporary or acting capacity.

**Figure 5.5**  
**Structure of Comelec**



To discover whether the Commission on Elections (Comelec) has a role in the settlement of election offences, the Constitution of the Philippines must be examined. According to the Constitution, Comelec will exercise the following powers and functions:

- (1) to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall;
- (2) to exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and



appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction;<sup>127</sup>

(3) to decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters;

(4) to deputise, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections;

(5) to register, after sufficient publication, political parties, organisations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of Comelec on Elections;<sup>128</sup>

(6) to file, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offences, and malpractices;

(7) to recommend to Congress effective measures to minimise election spending, including limitation of places where propaganda materials will be posted, and to prevent and penalise all forms of election frauds, offences, malpractices, and nuisance candidacies;

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<sup>127</sup> Decisions, final orders, or rulings of Comelec on election contests involving elective municipal and *barangay* offices will be final, executionable, and not appealable.

<sup>128</sup> Religious denominations and sects will not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government will likewise be refused registration. Financial contributions from foreign governments and their agencies to political parties, organisations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, will be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

(8) to recommend to the President the removal of any officer or employee it has deputised, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision; and

(9) to submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.<sup>129</sup>

Therefore, compared to the Election Commission in Indonesia, Malaysia, and Singapore, Comelec of the Philippines holds the broadest authority since it can enforce election laws, investigate and prosecute cases of violation of election offences.

The Comelec even shares judicial powers and functions with the courts of justice because section 2 (2), Article IX-C of the Philippine Constitution gives Comelec the power and function to exercise exclusive original jurisdiction over all contests relevant to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction.<sup>130</sup>

The special division which handles election contest is the Electoral Contests Adjudication Department (ECAD). The tasks are among others: plan, direct and coordinate all the activities of the Department related to the constitutional function of Comelec as sole judge of all contests relating to the elections, returns, and qualifications of all elective provincial and city officials;

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<sup>129</sup> Article 2 of the 1987 Constitution of the Republic of the Philippines.

<sup>129</sup> Hon. Hilario G. Davide, JR, "The Role of the Philippine Courts in Democratic Elections" [http://www.supremecourt.gov.ph/profiles/davide\\_speech/role\\_phil\\_courts.htm](http://www.supremecourt.gov.ph/profiles/davide_speech/role_phil_courts.htm)

and provide legal and technical services to Comelec, whether sitting *en banc* or in division, as sole judge of such electoral contests.<sup>131</sup>

The Comelec is responsible for enforcing electoral laws and monitoring all party activities during the campaign period. It has the authority to decide on all questions affecting elections, including the registration of political parties. To ensure free, peaceful, and credible elections, Comelec has presidential support to cooperate with law enforcement agencies and government institutions, including the Armed Forces of the Philippines. The Comelec has the exclusive authority to conduct preliminary investigations of election offences punishable under *the Omnibus Election Code*, and it can prosecute offenders. If Comelec fails to act on any complaint within four months from the date it was filed, the complainant may file the complaint with the Department of Justice for investigation and prosecution.<sup>132</sup>

The special division is the Investigation and Prosecution Division under Law Department of Comelec. The tasks are among others: to investigate and/or direct investigations on complaints relative to the conduct of elections and submit recommendations thereon; prosecute on its own or collaborate with government prosecutors in the prosecution of election offences; and coordinate the activities of law enforcement agencies deputised by Comelec as well as those agencies performing functions related to the conduct of elections.<sup>133</sup>

In *People of the Philippines v Honourable Enrique B. Inting*, the Supreme Court of the Republic of the Philippines upheld the Comelec's assertion of authority, as to exclusive power to conduct preliminary investigation and prosecution in cases involving election offences.<sup>134</sup> In this

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<sup>131</sup> <http://www.comelec.gov.ph/aboutus/structure.html>  
<http://www.comelec.gov.ph/aboutus/functions.html>  
<http://www.comelec.gov.ph/aboutus/law.html>

<sup>132</sup> *Ibid.*

<sup>133</sup> <http://www.comelec.gov.ph/aboutus/law.html>

<sup>134</sup> *People of the Philippines v Honourable Enrique B. Inting*, Judge, G.R. No. 88919, July 27, 1990.

case, Comelec directed Gerardo Lituanas:<sup>135</sup>(1) to conduct the preliminary investigation of the case; (2) to prepare and file the necessary information in court; (3) to handle the prosecution if the evidence submitted shows a prima facie case and (4) to issue a resolution of prosecution or dismissal as the case may be. This directive to conduct the preliminary investigation was in accordance to Comelec Resolution which is based on the Constitutional mandate as provided in section 2, Article XII-C of the 1973 Constitution and the Omnibus Election Code. The 1987 Constitution also mandates the Comelec not only to investigate but also to prosecute cases of violation of election laws.<sup>136</sup>

Hence, different from Indonesia, Malaysia and Singapore where prosecution is conducted by District Attorney or Deputy Public Prosecutor, the *Omnibus Election Code* of the Philippines provides that the prosecution is conducted by Comelec. In the Philippines legal system, Comelec is the sole institution conducting preliminary investigation and at the same time conducting prosecution over all offences stipulated in the *Omnibus Election Code* of the Philippines as stipulated in section 265:

“The Commission will, through its authorised legal officers, have the exclusive power to conduct preliminary investigation of all election offences punishable under this Code, and to prosecute them.”<sup>137</sup>

The Comelec may provide assistance to other prosecuting arms of the government. Provided, however, that in the event that Comelec fails to act on any complaint within four months from its filing, the complainant may file the complaint with the Office of the Fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.<sup>138</sup>

<sup>135</sup> Provincial Election Supervisor of Dumaguete City.

<sup>136</sup> See *People of the Philippines v Honourable Enrique B. Inting*. Loc.cit.

<sup>137</sup> *Omnibus Election Code* of the Philippines, section 265.

<sup>138</sup> *Omnibus Election Code* of the Philippines, section 265.

Since the *Omnibus Election Code* of the Philippines recognises a different procedure for the election offences proceedings other than that for general offences, Comelec has the authority to investigate, even prosecute election offences. The court trying election offences is the Regional Trial Court (RTC), except those relating to the offence of failure to register or failure to vote which will be under the jurisdiction of the Metropolitan or Municipal Trial Courts. From the decision of the courts, appeal will lie as in other criminal cases.<sup>139</sup>

In *Rogelio Juan, Pedro de Jesus, Delfin Carreon and Antonio Galguerra v People of the Philippines*,<sup>140</sup> the judge stated that the Petitioners were charged with violating section 261 (o) of the *Omnibus Election Code*. Under section 268 of the Code, Regional Trial Courts have exclusive jurisdiction to try and decide any criminal action or proceeding for violation of the Code, “except those to the offence of failure to register or failure to vote.”

“Sec. 268. Jurisdiction of courts. The Regional Trial Courts will have the exclusive jurisdiction to try and decide any criminal action or proceeding for violation of this Code except those to the offence of failure to register or failure to vote, which will be under the jurisdiction of the metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases.”

The judge in this case finally stated that “Undoubtedly, pursuant to section 268 of the *Omnibus Election Code*, election offences also fall within the exception.” Clearly then, Regional Trial Courts have jurisdiction to hear and decide cases for violation of the *Omnibus Election Code*, such as those filed against petitioners.

For an effective enforcement of the provisions of the Code, Comelec is further vested with the certain authorities, duties and responsibilities: (1) to issue search warrants after examination under oath or affirmation of the complainant and the witnesses; (2) to stop any illegal election activity, or confiscate, tear down, and stop any unlawful, libellous, misleading or

<sup>139</sup> *Omnibus Election Code* of the Philippines, section 268.

<sup>140</sup> [G.R. No. 132378, January 18, 2000] Third Division.

false election propaganda, after due notice and hearing; and (3) to inquire into the financial records of candidates and any organisation or group of persons, *motu proprio* or upon written representation for probable cause by any candidate or group of persons or qualified voter, after due notice and hearing.<sup>141</sup>

Moreover, Comelec is responsible for enforcing electoral laws and monitoring all party activity during the campaign period. It has the authority to decide on all questions affecting elections, including the registration of political parties. To ensure free, peaceful, and credible elections, with the President's approval Comelec can work with law enforcement agencies and government institutions, including the Armed Forces of the Philippines.

In practice, however, election and campaign finance laws are rarely enforced. Despite the scope of its responsibilities, Comelec has few resources to provide effective oversight. The Comelec has few full-time staff persons and often has the capacity only to respond to reported infractions rather than to identify violations proactively. However, cases filed with Comelec usually take years to be resolved. Election protest cases, for example, are often considered a waste of money and time because the next election frequently comes before the cases' resolution.<sup>142</sup>

Based on the above-mentioned discussion, it is clear that compared to the Election Commissions in Indonesia, Malaysia, and Singapore, the tasks and authorities of Comelec are broader. The role of Comelec is wider in the settlement of election offences. Especially for law enforcement, the Constitution of the Philippines explicitly stated that Comelec: (1) enforces and administers all laws and regulations relative to the conduct of an election, plebiscite, initiative,

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<sup>141</sup> *Omnibus Election Code* of the Philippines, section 57.

<sup>142</sup> Manikas, Peter M and Laura L. Thornton (Eds.), *Political Parties in Asia Promoting Reform and Combating Corruption in Eight Countries*, (Washington: National Democratic Institute for International Affairs, 2003) at 231-232.

referendum, and recall; and (2) investigates and, where appropriate, prosecutes cases of violations of election laws, including acts or omissions constituting election frauds, offences, and malpractices.

Related to such wide authority, it is important to relate it with the background of the Comelec commissioners, namely “members of the Philippines Bar who have been engaged in the practice of law for at least ten years.” This provision is highly recommended and should be applied; particularly if an election commission is entitled to set up election regulations, supervise election, or even conduct certain legal actions (investigate or prosecute election offence). This provision is also highly in line with international standards which states that: “at least some members of EMBs, at every level, have a background of training in law.”<sup>143</sup> Contrasted to this, for comparison, under Indonesian *Law No.12 of 2003*,<sup>144</sup> there is no provision as such. Consequently, in present situation there was no commissioner in Indonesian Election Commission who has a legal background.

### 5.2.2 Burden and Standard of Proof

Proof is a pivotal matter in the examination process in a court of law. By means of proof, the fate of a defendant is determined. If the result of the proof by the stipulated evidence “is not adequate” to prove the fault of the defendant, then the defendant will be “released” from sanction. On the contrary, if the fault of the defendant can be proven by the evidence, then the

<sup>143</sup> International IDEA, (2002), op.cit., 39.

<sup>144</sup> *Law No. 12 of 2003* and recent legislation, *Law No. 10 of 2008*.

defendant will be declared “guilty.” Proof is a provision containing guidance regarding the manner permitted by laws to prove the fault of defendant.<sup>145</sup>

In general, to prove means to give certainty of judgment on selected series of events. Types of evidence vary between civil and criminal cases; evidence in criminal case requires proof of guilt beyond reasonable doubt, while evidence in civil case does not necessarily require it.<sup>146</sup> Moreover, issues in criminal court are determined by attorney’s charge and defendant’s plea, while those in a civil court are determined solely by pleas of the claimants. In regard to the legal proceedings in both cases, who must be present to confirm particular facts? By what means is this to be done? And what evidence may be admitted?<sup>147</sup>

The expression burden of proof or *onus* of proof is used primarily in the context of the question of where the burden lies, that is, which of the parties is to bear the burden of establishing in his favour any fact or facts in issue, or would lose on the issue if no evidence or no further evidence was adduced on it.<sup>148</sup> In a criminal case, the burden of proof is related to presumed innocent principle of the defendant. As pointed out by Roderick Munday:<sup>149</sup>

“Probably the most celebrated principle of English criminal law is that the accused is initially presumed innocent and it is for the prosecution to prove the guilt of an accused person beyond reasonable doubt.”

<sup>145</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali)* [Discussion regarding Problem and Practice of Criminal Procedure Code (Court Trial, Appeal, Cassation, and Review)] (2nd ed), (Jakarta: Sinar Grafika, 2003) at 273.

<sup>146</sup> Sudikno Mertokusumo *Hukum Acara Perdata Indonesia* [Indonesian Civil Procedure Law] 6th edition. (Yogyakarta: Liberty, 2002) at 129.

<sup>147</sup> Edwards, Erick J, *Cases on Evidence in Australia*, (Sydney-Melbourne-Brisbane-Perth: The Law Book Company Limited, 1981) at 1.

<sup>148</sup> In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. Black, *op.cit.*, 196.

<sup>149</sup> Munday, Roderick, *Evidence*, (Oxford: Oxford University Press, 2007) at 74.



As has been mentioned, in criminal cases the prosecution bears the burden of proof<sup>150</sup> throughout subject to the exceptions, namely “the defence of insanity” and “any statutory exceptions.” The burden of proof of pleas such as pleas to jurisdiction, *autrefois* convict and *autrefois* acquit would not be on the prosecution. With regard to such pleas, the maxim “*Ei qui affirmat*” would apply. The accused however does bear an evidential burden, a burden of adducing or citing evidence sufficient to raise any matter of excuse or extenuation in order to make it an issue before the Court.<sup>151</sup>

Related to the question of where the burden lies, is that of what the burden is, that is, what standard or degree of proof is required to discharge the burden.<sup>152</sup> The standard of proof in criminal case is normally proof *beyond reasonable doubt*. This concept is problematic. As pointed out by Roderick Munday, English courts, Canadian and United States courts are had to wrestle with the problem of what is the meaning of *beyond reasonable doubt*. The Canadian Supreme Court for example has determined that jurors need to be given a detailed explanation of what is meant by “reasonable doubt.”<sup>153</sup>

In Indonesia, the proof for election offences relating to both the burden of proof and the standard of proof adhere to the prevailing provisions in the *Criminal Procedural Code*, since *Law Number 12 of 2003* does not provide specific provisions. As previously discussed, the exception stipulated in such law is only relating to the time limit of investigation, prosecution and examination in the court and the limitation of the examining courts.<sup>154</sup> There is no different

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<sup>150</sup> All the elements of the crime must be proved by the government beyond a reasonable doubt. Black, op.cit., 196-197.

<sup>151</sup> *Id* at 99-100.

<sup>152</sup> *Ibid*.

<sup>153</sup> Munday, op.cit., 82-83.

<sup>154</sup> *Law Number 12 of 2003*, section 131 and section 133. Part of election offences is tried for the first and final degree in the District Court; while the other part can submit appeal to the High Court as the appeal and final court.

rule regarding proof. Therefore, the proof refers to the general provisions contained in KUHAP. Therefore, we must review what provisions are in KUHAP regarding proof.

Just like in other countries, in criminal cases (including the election offences cases), the burden of proof lies on the prosecutor. The District Attorney prosecuting a defendant in the Court must be able to prove the fault of the defendant. The prosecutor must meet a burden of proof that is variously defined in different jurisdictions but basically requires overcoming the presumption of innocence that the law gives to every accused, no matter how guilty he or she, in fact, is. The prosecutor must prove, as to each material portion of the charge against the defendant that the defendant did what is stated in the indictment. This proof must be of a convincing nature and must establish the defendant's guilt beyond a reasonable doubt.<sup>155</sup> The facts proven must, by virtue of their probative force, establish guilt.<sup>156</sup>

Observed from the criminal procedural law as stipulated in KUHAP, in criminal cases (including election offences), the Public Prosecutor will act as the officer authorised to prove that the fault committed by the defendant is an offence. On the contrary, the defendant or his legal advisor has the right to deny the proof of the Public Prosecutor, in accordance with the manner permitted by laws, in the form of reasonable disavowal or rebuttal, with alleviating witnesses or *a de charge* witnesses or with "alibi."<sup>157</sup>

Even though *Law No. 12 of 2003* states that several parties (the elections participants, persons having the right to votes, and the elections observers) can report the occurrence of election offences to the Elections Supervisory Committee, their role are then taken over by the Elections Supervisory Committee who forward such report to the Police and after that the Police

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<sup>155</sup> Holten, N Gary and Lawson L. Kamar, *The Criminal Courts (Structures, Personnel, and Processes)*, (New York: Mc Graw-Hill, 1991) at 135.

<sup>156</sup> *Id* at 161.

<sup>157</sup> M. Yahya Harahap, *op.cit.*, 274.

will deliver the files to the District Court. In the election offences court, the reporting witness is not imposed with the burden of proof to prove the fault of the party being reported. Such burden of proof lies in hand of the District Attorney, in accordance with the provisions in KUHAP.

As in other countries, the standard of proof in criminal cases (including elections offences cases) in Indonesia is beyond a reasonable doubt (legally and convincingly proven). The *Indonesian Criminal Procedural Code* (KUHAP) states that the judge is not allowed to imposed criminal sanction to anyone unless if by at the least two legal evidences the Judge is convinced that an offence is really committed and that the defendant is the person responsible.<sup>158</sup>

According to Yahya Harahap, such provision is an affirmation that KUHAP adheres to a proof system based on the criterion that it is legally and convincingly proven (beyond a reasonable doubt). According to Yahya Harahap, the criterion of standard application of being legally and convincingly proven (beyond a reasonable doubt) according to the Indonesian criminal procedural law in Indonesia is that such proof: (1) is based on limitative evidences as stipulated in section 184 of *Law Number 8 of 1981* (out of those, there are no evidence which can be used); (2) such proof based on legal evidence both from formal and material aspects; and (3) such proof reaches the legal limit of evidence, i.e., at least two legal evidences.<sup>159</sup>

Hence, such provision in Indonesian *Criminal Procedure Code* is a limitation for a criminal court judge that to reach the standard it should supported by minimum two legal evidence as stated by the law. In other words, the confidence of the judge cannot come by any kind of evidence, but only certain limited evidence as stated by the law.

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<sup>158</sup> *Law Number 8 of 1981*, section 183.

<sup>159</sup> M. Yahya Harahap, *op.cit.*, 333 – 341.

In Malaysia, regarding the criminal process of election offences, such as corrupt practice, it must be strictly proved beyond reasonable doubt by clear and unequivocal evidence. In *Hamad Mat Noor v Tengku Sri Paduka Raja & 2 Ors* it is stated that: <sup>160</sup>

“... Only two types of onus of proof are known in our system. One is to prove beyond reasonable doubt and the other is on balance of probabilities. In a criminal court, the onus is beyond reasonable doubt while in a civil court it is on the balance or probabilities.”

There is a difference between the proof for election offences in the criminal court and the proof for election offences in the Election Court. The proof for election offences is the same as the proof of other offences, in which the burden of proof lies in the hand of the Public Prosecutor with the standard of proof beyond a reasonable doubt; while the burden of proof in the Election Petition lies in the hand of the petitioner (*pempetisyen*) with the standard of proof “a balance of probabilities.”

Beforehand, it is need to be emphasized that the *Election Offences Act 1954* recognised several election offences, i.e., as stipulated in Parts II, III and IV of the *Election Offences Act 1954*. The violation towards any offences will be imposed with criminal sanctions, which are also stipulated in such act. In addition to the imposition of criminal sanctions, there is also other implication as stipulated in section 32 (1) which states that: “The election of a candidate at any election is avoided by his conviction for any corrupt or illegal practice at such election.”

What is the difference of proof through the criminal court (as stipulated in section 31) and proof in the Election Court (as stipulated in section 32)? In the *case of Hamad bin Mat Noor v Tengku Sri Paduka Raja & Ors*,<sup>161</sup> the arising issue is the degree of proof required to prove the alleged election offences. In this case, the Court stated that:

<sup>160</sup> See *Hamad Bin Mat Noor v Tengku Sri Paduka Raja & 2 Ors* [1993] 2 AMR 33 at p.1941.

<sup>161</sup> *Hamad Bin Mat Noor v Tengku Sri Paduka Raja & Ors* [1993] 2 AMR 33 at pages 1938-1939. In the election for the Terengganu Legislative Assembly constituency seat of Tanggul, Tengku Sri Paduka Raja of the opposition Semangat 46 edged Haji Mustapha bin Muda of the Barisan Nasional by 16 votes.

“The scheme of the Election Offences Act can be divided into two clear areas of judicial functions. The first relates to those provisions pertaining to acts the proof of which must be done by way of criminal prosecutions in a criminal court which by end of the day will hand out punishments if the charges are proven. The second relates to acts, allegations of which are to be brought before the Election Judge by way of petitions with the view to avoid election.”<sup>162</sup>

In this case, the Court notices the difference between the standard of proof in a conviction in a criminal court (under section 31) and the standard of proof in Election Court (under section 32). If the standard of proof to be applied in a petition before an Election Judge is the same as in a criminal prosecution, then there is absolutely no necessity to appoint an Election Judge for the purpose as the Sessions Court Judge can dispose of the matter.<sup>163</sup> It is clear that there is a difference between proving a criminal case and proving election offence in a Sessions Court. In the first one, Public Prosecutor is responsible in providing proof beyond a reasonable doubt, while in the second one the petitioners are responsible in providing proof on a balance of probabilities.

In Singapore, whenever an election offence is processed through criminal proceeding, as in any other criminal justice systems, the burden of proof lays upon public prosecutor with standard of proof “beyond reasonable doubt.” This is related to the concept of fair trial. In *Haw Tua Tau*,<sup>164</sup> counsel for the appellant argued that the concept of fair trial included the features: (i) that a defendant will be presumed innocent until proven guilty according to law;<sup>165</sup> (ii) that the burden of proving his guilt will throughout be on the prosecution; (iii) that the defendant will be under no obligation to give evidence; and (iv) that the evidence adduced must prove guilt beyond a reasonable doubt.

<sup>162</sup> Id. at 1938-1939.

<sup>163</sup> Tunku Sofiah Jewa, op.cit., 1323.

<sup>164</sup> [1982] AC 136, 141.

<sup>165</sup> The presumption of innocence is much related to “beyond a reasonable doubt.” As cited by Chan Sek Keong, Cross on *Evidence* states that an accused person is presumed to be innocent is meant that the prosecution is obliged to prove the case against him beyond reasonable doubt. Chan Sek Keong, “The Criminal Process – The Singapore Model” in *Singapore Law Review*, Vol. 17, 1996. 491-492.

Malaysia and Singapore courts have accepted the description of the degree of proof beyond a reasonable doubt by Lord Denning in *Miller v Minister of Pensions*: "...That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt."<sup>166</sup>

Compare to other system, there is a slight difference in the *Omnibus Election Code* of the Philippines. In this country, Comelec can prosecute, as stated in *the Omnibus Code* that Comelec will, through its duly authorised legal officers, have the exclusive power to conduct preliminary investigation of all election offences punishable under this Code, and to prosecute the same.

Therefore, the burden of proof in a criminal case lies in the hand of the Comelec. Since there is a presumption of innocence in criminal proceedings, responsibility of proving an accused as guilty is upon the prosecutor. *The Criminal Procedural Law* of the Philippines stated that the prosecution will present evidence to prove the charge and, in the proper case, the civil liability. Meanwhile, the accused may present evidence to prove his defence, and damages, if any, arising from the issuance of any provisional remedy in the case.<sup>167</sup> Moreover, the standard of proof, like any other offences cases, is "beyond a reasonable doubt." This is indeed not stipulated in the Code; however, this is referring to the prevailing criminal procedural law.

In *Domingo v Comelec*<sup>168</sup> the court ruling that the complaint for election offence is a criminal case which involved the ascertainment of the guilt or innocence of the accused candidate and, like any other criminal case, required a conviction on proof beyond reasonable doubt.

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<sup>166</sup> *Miller v Minister of Pensions* [1947] 2 AER, 372.

<sup>167</sup> Rule 119, 1985 *Rules of Criminal Procedure*.

<sup>168</sup> Certiorari assailing the en banc resolution of the Commission of Elections (Comelec), December 1, 1998 and the resolution of Comelec on the comelec First Division dated July 2, 1998 in SPA No. 98-361.

It is clear that in the Philippines, Indonesia, Malaysia and Singapore, there is no difference in terms of quality of proof in criminal process of election offences. As in common criminal cases, the proof required in election offences must be beyond reasonable doubt. However, it is important to note that in criminal process, the state possesses more resources to prove every element of a criminal offence, compared to that of the defendant. Since election offence cannot be seen separated from election process, in which the ruling party tends to protect its interest, the establishment of an independent and credible judiciary is essential.

### 5.2.3 Streamlining the Criminal Process

The time factor in settlement of election offences is very important. In this issue there are at least two aspects need to be discussed: first, is related to time limit for certain procedures, and second, related to finality of court judgment.

Indonesia recognises a difference between criminal process of election offences and other offences, particularly concerning time limit. The police only have 30 days to investigate a case, followed by seven days to deliver a complete file of the case to the District Attorney.<sup>169</sup> Upon receiving files from the Police, the District Attorney has 14 days to deliver the case files to the Court.<sup>170</sup> In addition to the time limit, other provisions regarding the investigation and prosecution of these election offences refer to KUHAP.<sup>171</sup>

Unlike settlement of other offences, the trials of election offences are divided into two categories. The first category is election offences that are punishable by less than 18 months of

<sup>169</sup> *Law Number 12 of 2003*, section 131(2) and (3). This is different from the investigation for general offences.

<sup>170</sup> *Law Number 12 of 2003*, section 131(4).

<sup>171</sup> *Law Number 12 of 2003*, section 131 (1). *Indonesian Criminal Procedure Code (KUHAP)* only stipulated period of detention. The period of detention by police is 60 days, by public prosecutor 50 days, by district court 90 days, by high court 90 days, and by Supreme Court 110 days. *Law Number 8 of 1981*, section 24 to section 28.

imprisonment which must be tried at first instance in the District Court<sup>172</sup> at the latest within 21 days.<sup>173</sup> The second category is election offences which are tried in the District Court at first instance and High Court as the final appellate court at.<sup>174</sup> For these particular cases, the District Court has a time limit of 21 days and the High Court has a time limit of 14 days.<sup>175</sup> Unfortunately, the law does not clarify the time limit for submitting an appeal.

In principle, the settlement of election offences according to *Law Number 12 of 2003* is identical to the settlement of election offences conducted in the 1999 General Elections<sup>176</sup> with several new developments, the most important of which is that the settlement of the 2004 election offences is faster than those in 1999. Back then settlement process had to be treated as offences in general without any difference in terms of time limit and stages.

In the settlement of election offences cases, there are time limits in five phases, i.e., report acceptance phase, report review phase, investigation and delivery of files to the district attorney phase, prosecution phase, and examination in court phase.<sup>177</sup> The report of election offences must be delivered to the *Panwaslu* at the latest seven days after such incident.<sup>178</sup> *Panwaslu* should review and determine whether such report should be followed up or not within seven days,<sup>179</sup> and another seven days can be added if additional information is required.<sup>180</sup>

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<sup>172</sup> *Law Number 12 of 2003*, section 133 (2).

<sup>173</sup> *Law Number 12 of 2003*, section 133 (4).

<sup>174</sup> In the current development, under new election legislation, *Law No. 10 of 2008*, the differentiation into two types of cases is terminated. The new law determines that all election offences can be appealed to the high court with final decision.

<sup>175</sup> *Law Number 12 of 2003*, section 133 (4).

<sup>176</sup> The principal similarity is that the settlement of election offences in the 2004 General Elections is also under the criminal justice system in accordance with the provisions in the Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana*/ KUHAP).

<sup>177</sup> One phase which is not stipulated is submission of appeal.

<sup>178</sup> *Law Number 12 of 2003*, section 127 (4).

<sup>179</sup> *Law Number 12 of 2003*, section 128 (2).

<sup>180</sup> *Law Number 12 of 2003*, section 128 (3).



Upon receiving reports from *Panwaslu*, the police should investigate the case within not more than 30 days,<sup>181</sup> and then deliver the files of the case to the district attorney in the successive seven days.<sup>182</sup> The Public Prosecutor only has 14 days to deliver the indictments to the court.<sup>183</sup> These time limits must be fulfilled, otherwise charges will be rejected by courts as has occurred in *Nasrun Masri Case*, a candidate of DPRD Banjar Municipality (South Kalimantan) who was charged for forging an academic document (as one requirement of candidacy).<sup>184</sup> In that case, the judge rejected the charge due to failure to meet the time limit (*kadaluwarsa*).<sup>185</sup>

For election offences punishable by criminal sanction of less than 18 months of imprisonment, the election offences case will be settled at the first instance and last resort in the District Court within at the maximum 21 days.<sup>186</sup> Meanwhile, election offences punishable by 18 months of imprisonment or more will be examined in the District Court for 21 days and in the High Court as the appellate court for at the maximum of 14 days.<sup>187</sup> Therefore, counted from the investigation, it takes at most 72 days for the first category of election offences, and more or less 86 days for the second category of election offences.<sup>188</sup> If counted from the incident, then it takes approximately 100 days or more than three months.

<sup>181</sup> Law Number 12 of 2003, section 131 (2).

<sup>182</sup> Law Number 12 of 2003, section 131 (3).

<sup>183</sup> Law Number 12 of 2003, Section 131 (4) In the Indonesian elections laws, election offences cases are tried by courts in the public judiciary. The lowest level of Public Judiciary in Indonesia is the District Court located in the Regency/Municipality; above it is the High Court located in the Province; and in the highest level is the Supreme Court. There are four types of Judiciary (for each level). The general judiciary is authorised to settle civil and criminal cases. In addition to the General Judiciary, there are three other types of courts in the judiciary, i.e.: the Military Court, Administrative Court, and Religious Court. All of these courts are under the Supreme Court of the Republic of Indonesia as the highest level. Indonesia also recognises other judicial authority, i.e., the Constitutional Court of the Republic of Indonesia as one of its authorities is to settle election dispute.

<sup>184</sup> Law Number 12 of 2003, section 137 (1)

<sup>185</sup> Appendix of *Panwaslu Report, Panitia Pengawas Pemilu*, (2004) loc.cit.

<sup>186</sup> Law Number 12 of 2003, section 133 (2)

<sup>187</sup> Law Number 12 of 2003, section 133 (3)

<sup>188</sup> It does not include the time limit for submitting appeal, which is not being specifically limited in the Law No. 12 of 2003.

The short time limit of offence cases settlement in 2004 General Elections was intended to avoid them from being time consuming, since elections have a limited period. This provision regarding the limitation of time was probably based on the experience in the 1999 General Elections in which offences cases were handled in a protracted manner. There was even a case which remained unsettled for up to three years. Since the settlement of election offences must be conducted in the same manner as other offences, it takes quite some time to reach a final and binding decision. Most of the other cases were settled within a period of approximately 14 months.

The settlement of election offences in the 1999 General Elections apparently took a long time; it even finished long after the completion of all stages of the 1999 General Elections.<sup>189</sup> Criminal sanction did not seem to prevent election offences. Absence of a proper enforcement of the court decision seemed to render the law ineffective to deter offenders. Up to 2003, there was still one case which had not been settled at the Supreme Court level, and the imposed sanction was relatively light, i.e., three months imprisonment.<sup>190</sup> Meanwhile, two cases were settled more than one year later and the imposed sanctions were very light, i.e., several months imprisonment with probationary period.<sup>191</sup>

In contrast with the 1999 General Elections, during the 2004 General Elections there were 1,022 cases<sup>192</sup> of election offences in election of members of DPR, DPRD and DPD (the

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<sup>189</sup> According to the Law No. 3 of 1999, there was no rule dividing light and severe election offences which determines the differentiation of settlement. All types of election offences are settled in the same manner as offences in general, i.e., must go through the investigation and examination stage by the police, prosecution by the district attorney, and examination stage in the District Court, appeal stage in the High Court, and at last resort in the Supreme Court, regardless of the light or severe manner of election offences and the light or severe sanctions being imposed by the judges in the first instance.

<sup>190</sup> *Charis Widyarso* case.

<sup>191</sup> The case of *Sri Mulyanto and the case of Kohirman, Sudirman, and Chun Masindo*.

<sup>192</sup> Panitia Pengawas Pemilu Final Report, loc.cit.

Legislative Elections) which were mostly settled in less than three months from their investigation up to the court decision.

The settlement of election offences was slightly different from the settlement of offences in general. In addition to the role of *Panwaslu*, what differs election offence settlement law from criminal procedural law aspect is the stipulation of brief settlement of election offences, starting from the investigation, prosecution up to examination in the court proceeding which classifies election offences into two categories. One category is directly settled in the District Court level, while another category acknowledges the final proceeding in the High Court.

*Law Number 12 of 2003* brought changes to the brief settlement of election offences. For election offences punishable by less than 18 months imprisonment, the cases will be settled at the latest within 62 days, while for election offences punishable by more than 18 months imprisonment, the cases will be settled more or less within 78 days.<sup>193</sup>

The time limit of settlement is in accordance with the international standards on settlement of election dispute which stresses on the importance of a quick decision. Election-related disputes are very time-sensitive and hence their resolution processes are also "time-intensive application." Because election disputes are special cases, they need special attention and have to be put on a "fast track." However the need to act quickly should not eliminate the fact that "the mechanism and dispute settlement bodies will be fair and considered to be fair by the parties."<sup>194</sup>

But what really are the purposes of creating special mechanism to streamline election offence in Indonesia? One would answer that it is to avoid any delay in the conduct of election

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<sup>193</sup> Meanwhile, in the 1999 General Elections, there are cases which were settled more than three years, even up to the present there is still one unsettled case.

<sup>194</sup> Wallace, J. Clifford, "Gugatan Pemilu di Amerika Serikat" [Election Petition in the United States of America], Paper presented in Workshop The Role of Constitutional Court on Settlement of Result of Election Disputes through a Transparent Court Process, February, Bogor, 2004, at 3.

due to the criminal process. But this argument is not very strong, because the criminal process can be conducted in parallel with the election process. The better answer would be a need to streamline the criminal process with stronger legal consequences of conviction, i.e. disqualification from candidacy or annulment of election result. Unfortunately, the relation between criminal conviction and disqualification of candidacy or annulment of election result is not established in the Indonesian legal framework.

Similar to that in Indonesia, in the Philippines, the *Omnibus Election Code* also gives attention to fast settlement of election offence cases. The investigation and prosecution of cases involving violations of the election laws will be given preference and priority by Comelec and prosecuting officials. Their investigation will commence without delay, and will be resolved by the investigating officer within five days from its submission for resolution. The courts will likewise give preference to election offences over all other cases, except petitions for writ of *habeas corpus*. Their trial will commence without delay, and will be conducted continuously until terminated, and the case will be decided within thirty days from its submission for decision.<sup>195</sup>

Compared to other countries, the fast settlement of election offence in criminal process has not been a big issue in election legal framework in Malaysia and Singapore. The election offence cases are processed as common criminal acts, which uses the *Criminal Procedure Code*. However, if someone is convicted for committing an election offence, then this conviction can be used to disqualify or annul an election result.

In Malaysia, there were few criminal proceedings for election offences, the majority of cases of election offences were settled through election petition before the Election Judge. For example, in the 1995 Elections, out of the 22 election offences cases being tried, there was only

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<sup>195</sup> *Omnibus Election Code* of the Philippines, section 269.

one case settled through the criminal proceedings in the Sessions Court, the rest were submitted through election petition to the Election Judge. The one election offence case was the case of the *Public Prosecutor v Wong Sing Nang*.<sup>196</sup> For the 1999 Elections, the entire 12 cases were settled through election petition, and not even one of them was settled through the criminal process.<sup>197</sup>

To conclude, this chapter has discussed two aspects of election process in criminal proceedings. First is concerning substantive aspect focusing on the impact of election offence conviction. Second is concerning procedural aspect which includes jurisdiction of certain institutions, availability of proof and streamlining the process. In first aspect, the above-mentioned description has shown that generally Indonesia, Malaysia, Singapore and the Philippines have complied with international standards which stated that the impact of conviction toward election result should regulated in the legal framework. However, legal framework of elections in Indonesia does not fully conform to those standards, since it does have rules which state that irregularities have implications on the outcome of elections. The legal framework merely states that conviction on bribery case has implication to disqualify a candidate involved in the case.

In criminal proceeding, Indonesia and the Philippines applies a more streamline process either in investigation, prosecution, and trial proceeding. While in other countries there is no special rule which streamlines the criminal proceeding of election offences. As other criminal offences, election offences treated equally. This includes the issue of proof, either standard of proof or burden of proof. The legal frameworks and the relevant cases have shown that in these

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<sup>196</sup> Sessions Court (Miri) – Criminal Case No. 62-27-95. In *Public Prosecutor v Wong Sing Nang*, the legal bases being used are, among others, the *Criminal Procedure Code* (FMS Cap 6), *Election Offences Act 1954* and the *Evidence Act 1950*.

<sup>197</sup> See Tunku Sofiah Jewa, *op.cit.*, volume 1-3.

countries, the prosecutor bears the burden of proof, while the standard of proof is beyond a reasonable doubt.



## CHAPTER 6

### SETTLEMENT OF ELECTION OFFENCES IN ELECTION PETITION PROCESS

*"Free and fair election requires equality before the law and legal protection for all candidates and their agents. Government and electoral institution shall provide impartial and efficient complaint mechanism as well as effective compensation and settlement for political contestants."*<sup>1</sup>

The previous chapter has discussed settlement of election offences through the criminal process covering both the substantive and procedural aspects. The present chapter discusses several issues related to different aspect of election offences, namely the electoral aspects which are basically civil in nature. There is one major issue with the substantive aspect that need to be scrutinised, that is, election offences used as a ground for election petition. On the other hand, the procedural aspect requires a discussion of the institutional roles (jurisdiction and model of settlement), the burden and standard of proof and the time limit for settlement (streamlining of the process).

Since there is only one major substantive issue, the substantive issue will be discussed together with the procedural issues under the respective countries covered in the study. This chapter will conclude with recommendations on streamlining the election petition process and also a consideration of protection of both the public and individual interest.

#### 6.1 Mode of Settlement

As a background to the main discussion in this chapter, there is a need to briefly provide the basis and summary of models of electoral dispute settlement. The basis is international standards and there are five models.

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<sup>1</sup> Merloe, Patrick, *Pemilihan Umum Demokratis: Hak Asasi, Kepercayaan Masyarakat dan Persaingan Yang Adil* [Democratic General Election: Human Rights, People Trust and Fair Competition], (Jakarta: Dinas Penerangan Amerika Serikat, 1994) at 11.

According to international standards, the right to challenge election results and for aggrieved parties to seek redress must be provided by law. The petition process should set the scope of available review, procedures for its initiation, and the powers of the independent judicial body charged with such review.<sup>2</sup> In this respect, there is no strict model to be followed.

As has been mentioned by J. Clifford Wallace, in order to guarantee the functioning of a democratic process, there should be a logical method to settle disputes over electoral law violations. The method is expected to be one which adheres to the principles of truthfulness, fairness and effectiveness. Furthermore, best practices of such method are likely to differ from one country to another due to differences in culture, interest, and expectation. However, in general, a society needs selected norms, namely those which promote an open and transparent system, and society's confidence upon the fairness of an election process.<sup>3</sup> In a dispute settlement, the court also plays an important role in ensuring free and fair elections. This importance is particularly due to its potential as a weak point in the electoral system.<sup>4</sup>

There are various models of electoral dispute settlement. We may identify at least five models of electoral dispute settlement, i.e., (i) electoral management bodies investigate and settle a complaint, accompanied by the possibility of appeal to higher level; (ii) a special electoral court, election judge or electoral tribunal to settle election complaints; (iii) a general court processes for election complaint, accompanied by the possibility of appeal to a higher level; (iv) a Constitutional Court or a constitutional justice body to handle electoral dispute settlement; and (v) settlement of election dispute by a Supreme Court. Based on the election laws of the

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<sup>2</sup> United Nations Centre for Human Rights. *Professional Training Series No. 2, Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections*, (New York and Geneva: United Nations, 1994) at 16.

<sup>3</sup> Wallace, J. Clifford, "Gugatan Pemilu di Amerika Serikat" [Election Petition in the United States of America], Paper presented in Workshop concerning the Role of Constitutional Court on Settlement of Result of Election Disputes through a Transparent Court Process, February, Bogor, 2004, at 1.

<sup>4</sup> Abdul Aziz Bari, *Malaysian Constitution a Critical Introduction*, (Kuala Lumpur: The Other Press, 2003) at 219.



respective countries, it can be concluded that the models preferred by each country are as follows.

**Table 6.1  
Electoral Dispute Settlement**

<b>System of Dispute Settlement</b>	<b>Country</b>
Electoral bodies investigate and settle complaint, accompanied by appellate possibility to higher level	The Philippines Elective <i>Barangay</i> Officials, Elective Municipal Officials appeal to Comelec finally to Supreme Court; Elective Regional, Provincial, City, Officials appeal to Supreme Court
Special election court, election judge or electoral tribunal to process election complaint;	Malaysia , Singapore The Philippines (election for house of representative/HRET and Senate/SET); appeal to Supreme Court
General court process of election complaint, could appeal to higher level;	Indonesia for regional election (municipality election) (2004-2008)
Settlement of election dispute delivered to Constitutional Court or constitutional justice body	Indonesia (election for DPR/DPRD, DPD, President) and Regional Election
Settlement of election dispute by Supreme Court	Indonesia for regional election (gubernatorial election) The Philippines (Presidential Election)

## 6.2 Election Offences as Ground for Election Petition

The purpose of submitting an election petition is especially to request that the results acquired by a contesting party be cancelled due to a certain ground. This sub chapter shall limit the discussion to whether there are relationships between election offences and election petition. Can all categories of election offences be used as ground for election petition? As a background it is a need to explain whether there are rules regarding election petition in each country.

**Table 6.2  
Election Petition**

<b>Country</b>	<b>Provisions regarding Election Petition</b>	<b>Grounds for election petition</b>	<b>Limitations of offences being used as grounds for petition</b>
Indonesia	Yes, Provided in the Constitutional Court Law	Vote miscalculation	No provision
Malaysia	Yes, Provided in the <i>Election Offences Act</i>	a) <i>ab initio</i> ineligibility; b) election offences; and c) conduct of the elections	All corrupt or illegal practices
Singapore	Yes, Provided in the <i>Parliamentary Elections Act</i>	(a) general bribery, general treating, or general intimidation, or other misconducts, or other circumstances, whether similar to those enumerated before or not, the majority of electors were or may have been prevented from electing the candidate or group of candidates whom they preferred; (b) non-compliance with the provisions of Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in those provisions and that the non-compliance affected the result of the election; (c) corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate; (d) candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that the person had, within 7 years prior to the engagement, been convicted or found guilty of a corrupt practice by a District Court or by the report of an Election Judge; (e) that the candidate was at the time of his election a person disqualified for election as a member	All corrupt or illegal practices

The Philippines	Yes, provided in the <i>Omnibus Election Code of the Philippines</i>	<u>Pre-Proclamation Controversies</u> <sup>5</sup> (a) Illegal composition or proceedings of the board of canvassers, (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic, and (d) When substitute or fraudulent returns in controvert polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates; (d) Material defects in the election returns; (e) election returns appear to be tampered with or falsified; and (f) Discrepancies in election returns; (g) ineligibility or of disloyalty to the Republic of the Philippines.	Not stipulated in the Law
		<u>In an election contest</u>  All legal and factual issues, election irregularities as fraud, vote-buying and terrorism	

### 6.2.1 Election Petition in Indonesia: Grounds and Process

In Indonesian election legal framework, the results of general elections can only be overruled by submitting a petition concerning those results before the Constitutional Court. As has been discussed in the previous chapter, the settlement process over the reported election offences will only result in a criminal sanction for the offender, but it will not affect the results of the General Election itself.

<sup>5</sup> Refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission.

What kind of grounds can be used for submitting an election petition in Indonesia? If these grounds include election offences, what sort of offences are eligible to be used as grounds for the petition? Referring to section 75 of *Law Number 24 of 2003* and the *Constitutional Court Regulation Number 04/PMK/2004*, the only ground for submitting an election petition is one that involves an assumption of vote miscalculation announced by KPU. Therefore, the occurrence of election offences cannot be used as a ground to submit a petition over the General Election result to the Constitutional Court.

If the only eligible reason to submit the petition is the miscalculation done by the KPU, one may then ask whether such incident may have been caused due to certain election offences (for example, manipulation of election result). Can this irregularity become the ground of an election petition? It is submitted that, since *Law No.12 of 2003* states such condition in a general term, i.e., the occurrence of miscalculation, then it must be interpreted broadly (mistakes by coincidence, negligence or deliberateness). Therefore, any election offences which may affect the vote calculation made by KPU eventually affecting the fair acquirement of seats, can be used as a ground for submitting an election petition in Indonesia.

Our next concern is on what sort of election offences can affect the vote calculation made by KPU. As has been mentioned previously, there are several offences which are greatly affect or influence the acquisition of votes and seats (but not considered related to the possible cancellation of general election result) i.e., offences stipulated in section 140 paragraphs (1),<sup>6</sup> (2),<sup>7</sup> (3)<sup>8</sup> and (4)<sup>9</sup> of *Law No. 12 of 2003*. These offences can thus be used as a ground for

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<sup>6</sup>Anyone who intentionally commits an action which causes the voting right of a voter becomes invaluable or causes a certain general election participant to acquire additional votes or its acquirement of votes is decreased.

<sup>7</sup>Anyone who intentionally damages or loses the sealed general election result.

<sup>8</sup>Anyone who due to his negligence causes the damaging or losing of the sealed general election result.

<sup>9</sup>Anyone who intentionally alters the general election result and/or the minutes and the certificate of the general election result.

submitting an election petition, due to their described nature as to be able to affect the calculation. On the other hand, other offences (including bribery towards voters) are not eligible to be used as petition grounds since they do not lead (directly) towards miscalculation. Nevertheless, *Law Number 24 of 2003* (concerning the Constitutional Court) does not mention these grounds explicitly.

Hence it is clear that the only eligible grounds for submitting an election petition in Indonesia would be those which involve a single requirement, namely the existence of “vote miscalculation committed by the Election Commission (KPU).“

It is submitted that this provision should be corrected, because in fact there are some election offences that could affect votes miscalculation other than the ones stipulated in *Law No.12 of 2003*, i.e. (i) intentionally committing an action which causes the voting right of a voter to become invaluable or causes a certain general election participant to acquire additional votes or having his/her acquirement of votes decreased; (ii) intentionally damaging or losing the sealed general election result; (iii) by negligence causing damage or losing the sealed general election result; and (iv) intentionally altering the general election result and/or the minutes and the certificate of the general election result.



Despite the limitations of offences stipulated by *Law No. 12 of 2003*, the Constitutional Court accepted grounds of petition in the forms of: (i) the existence of vote miscalculation; and (ii) the existence of election offences which affected the vote miscalculation.<sup>10</sup> An example of vote miscalculation used as a ground for petition can be seen in an election petition raised by

<sup>10</sup> Other election offences such as money politics (bribery), violence, pre-campaign period campaigning, cannot be accepted as a ground of petition.

*Partai Bulan Bintang* [Crescent Star Party/ PBB]. According to the petitioner, KPU had implemented a wrong method in calculating the votes and that the method of implementation was against the law, as it resulted in harm for the said party.

The petitioner argued that KPU had conducted calculation by joining the acquired amount of party votes with individual votes. One example of this can be seen in Banten II constituency in which PBB claimed as to have gained 97,616 votes, instead of 57,385 (as declared by KPU).<sup>11</sup> In another case, the Constitutional Court also accepted a petition from *Partai Nasionalis Banteng Kemerdekaan* [Freedom Bull Nationalist Party/PNBK] due to vote miscalculation in constituency III of Gianyar Municipality (Bali).<sup>12</sup> According to the Constitutional Court (MK), the votes obtained by PNBK in TPS (Polling station) 1 and TPS 17, Batuan Village, Sub District Sukawati that were not included in the PPK and KPU Gianyar Municipality votes calculation shall be taken into account.<sup>13</sup>

The occurrence of manipulations toward vote calculation documents has indeed been considered as an acceptable reason to submit an election petition. A relevant case on this issue is the petition from *Partai Amanat Nasional* [National Mandate Party/PAN] concerning calculation irregularity for DPR elections in Sulawesi Tengah [Central Sulawesi] constituency.<sup>14</sup> The petitioner alleged that there was irregularity within the data assembled by the KPU. The Constitutional Court eventually granted the petition, thus shifting the seats that were previously acquired by *Partai Demokrat* [Democratic Party] prior to the petition, to *Partai Amanat Nasional* [National Mandate Party/PAN].<sup>15</sup>

<sup>11</sup> Case No. 045/PHPU.C1-II/2004.

<sup>12</sup> Case No. 015/PHPU.C-II/2004.

<sup>13</sup> Constitutional Court, *Berita Mahkamah Konstitusi* [Constitutional Court News], *Edisi Khusus Penyelesaian Perselisihan Hasil Pemilu 2004* [Special Edition: Settlement of 2004 General Election Dispute], No. 5, June-July 2004, 16-17.

<sup>14</sup> Case No. 039/PHPU.C-II/2004.

<sup>15</sup> Constitutional Court, *op.cit.*, 22.

Another problem which lies in the matter of finding a ground for submitting an election petition is the interpretation of the “election result.” Up until now, the term remains to be interpreted in a narrow sense, namely the “result-based approach” and not the “process-based approach.”

There is no election court or election judge in Indonesia.<sup>16</sup> Yet this does not imply the absence of institutions authorised to conduct election dispute settlements. In Indonesia, an institution that performs such role is the Constitutional Court (*Mahkamah Konstitusi*). Therefore, in effect, the Constitutional Court has already been playing a role as the “election court” all these time. However, if we are to categorise each matter related to general elections by matching it with the relevant institutions, we can come up with the following:

**Table 6.3**  
**Type of Cases and the Relevant Institutions in Indonesia**

No	Matters	Institution
1	Election offences	District Court, High Court
2	Disputes in the Process of Elections (do not include disputes over election result)	Election Supervisory Committee
3	Disputes over the General Election Result	Constitutional Court

These courts possess different roles and authorities compared to the Supreme Court. One of these authorities which are highly important according to international standard is the settlement of election disputes.<sup>17</sup> The settlement of election cases is considered as one of the

<sup>16</sup> The discourse regarding the General Election judiciary was once brought up, especially after the 1999 General Elections; however, by 2004, in both the Constitution and the Law regulating the General Elections, there was no mention of a special election court.

<sup>17</sup> Refer to Article 24 C of the 1945 Constitution, section 10 *Law No. 24 of 2003*, sections 104 and 134 *Law No. 12 of 2003*.

most important thing in the whole election process, since the lack or absence of that element could possibly induce major political problems or even political chaos.

In Indonesia, not all elections-related disputes are handled by the Constitutional Court. The Court is charged only to resolve the disputes over election results that have already been announced nationally by the Election Commission, which may affect the number of seats acquired by a party in a particular constituency.<sup>18</sup>

The petitions over general elections in Indonesia are to be submitted to the Constitutional Court. This is in accordance to the provisions given in the 1945 Constitution, the Constitutional Court Law,<sup>19</sup> and the General Election Law.<sup>20</sup> The term used in these laws and regulations is “petition for disputes over general election results.”

By analysing cases which are related to election offences (especially the Legislative General Election for DPR, DPD, and DPRD), we can see that for the 2004 General Elections, the Constitutional Court had settled 252 election petition cases for the DPR and DPRD General Elections submitted by 23 political party petitioners, and 21 cases for General Elections for the House of Region Representatives (Dewan Perwakilan Daerah/DPD). Therefore, the total number of case dealt through election petitions in the Constitutional Court for the Legislative General Elections (DPR, DPD, and DPRD) are 273 cases.<sup>21</sup>

In the 2004 General Elections, election petitions were settled by the Constitutional Court, which tried the disputes at the first instance and at the last resort.<sup>22</sup> The disputes were mostly

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<sup>18</sup> Section 74 (2) Law No. 24 of 2003, section 4 Peraturan Mahkamah Konstitusi No. 04/PMK/2004 tentang Pedoman Beracara dalam Perselisihan Hasil Pemilihan Umum [Constitutional Court Regulation No. 04/PMK/2004 concerning the proceedings of a general election result settlement].

<sup>19</sup> Law No. 24 of 2003.

<sup>20</sup> Law No. 12 of 2003.

<sup>21</sup> Berita Mahkamah Konstitusi [Constitutional Court News], No. 5, June-July (2004) 4-5.

<sup>22</sup> Law Number 24 of 2003 section 75, the Constitutional Court Regulation Number 04/PMK/2004, section 5 (4) (b).



examined by nine judges (or seven judges in extraordinary circumstances).<sup>23</sup> As has been explained earlier in this chapter, unlike the provisions regarding election petition in Malaysia, Singapore and the Philippines (which are mostly stipulated in their respective general election law), there is only one section in Indonesia's election law<sup>24</sup> that covers issue regarding election petitions, which is section 134:

“In case if a dispute occurs regarding the results of the General Election as meant in section 104, it shall be examined and decided for the first and final degree by the Constitutional Court.”

By virtue of the provision in the 1945 Constitution and *Law Number 24 of 2003* and section 134 of *Law Number 12 of 2003* as aforementioned, the Constitutional Court arranges the procedural rules of dispute settlement over general election results.<sup>25</sup> In the 1999 General Elections, the 1945 Constitution had yet to stipulate provisions regarding constitutional court and there was no laws regulating the Constitutional Court. The authority to settle election disputes at that time was given to the Supreme Court of the Republic of Indonesia.

In the 1999 General Elections, there was only one submitted case concerning election offence, and it was a suit against *the Golkar Party* which was alleged for violating *Law Number 2 of 1999*<sup>26</sup> and *Law Number 3 of 1999*.<sup>27</sup> The issue at that time was related to illegal campaign funds. In the said case the Supreme Court finally dismissed the suit.<sup>28</sup> The procedures for case settlement in this particular case referred to the *Supreme Court Regulation Number 2 of 1999*.

<sup>23</sup> *Law Number 24 of 2003*, section 28 (1) states: “The Constitutional Court examines, trials, and decides in the plenary session of the Constitutional Court with nine constitutional judges, except for extraordinary circumstances, which is conducted with seven constitutional judges chaired by the Chairman of the Constitutional Court.” Section 28 (4) states: “Before the plenary session as meant in the paragraph (1), the Constitutional Court can form a panel of judges which members consist of at least three constitutional judges to conduct examination which result shall be discussed in the plenary session to be decided.”

<sup>24</sup> According to the *Law Number 12 of 2003*.

<sup>25</sup> *The Constitutional Court Regulation No. 04/PMK/2004*.

<sup>26</sup> Regarding the political party.

<sup>27</sup> Regarding general election.

<sup>28</sup> The decision of the Supreme Court of the Republic of Indonesia Number 01.G/WPP/2001.

Therefore, with the applicability of *Law Number 24 of 2004*, we may conclude that there had been a significant progress in election offence dispute settlements, since its procedures had become clearer than ever before.

The right to submit an election petition remains only for entities who participate in general elections. In the case of DPR/DPRD elections, the participants are political parties.<sup>29</sup> Nevertheless, this provision seems to be problematic. The problem lies with the fact that the legal framework does not provide any right for a DPR/DPRD candidate to submit an election petition. Instead, that right is granted for his/her political party. Therefore, if the candidate's political party decides not to submit any petition, the candidate's rights will eventually be impaired.

As has been mentioned, according to Indonesian electoral system, one or more candidates from the same political party may participate in one constituency. These candidates are recorded in a numerically sorted list determined by their party. However, in the end, only the candidate who can be directly elected is one who manages to fulfil the eligible seats quota, regardless of his/her numerical order. On the other hand, for candidates who fail to fulfil the seats quota, their seats shall be determined by their numerical order.

There is a potential problem which may arise from this circumstance. For example, a candidate argues that there has been a miscalculation done by the KPU, which caused him to fail in obtaining a seat, and thus automatically allows another candidate from the same party (which is in the higher numerical order) to defeat him. In this particular case, the failing candidate cannot submit an election petition to the Constitutional Court.

Then, how can the unsuccessful candidate seek justice? Can he/she file a complaint to the General Election Supervisory Committee (*Panwaslu*)? In accordance with its mandate, *Panwaslu*

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<sup>29</sup> *Law Number 24 of 2003*, Section 74 (1).

is not authorised to handle such complaint. Therefore, the absence of a provision regarding the right of a candidate to submit a petition is a violation of the candidate's political right, which should have been assured by the state. This is related to principle that there must be a remedy approach.

This is a right which was supposed to be provided by law. According to international standards, "law should provided the right to challenge election results and for aggrieved parties to seek redress." A candidate or political party in the election can fight for its right by petitioning the election result. As has been mentioned in chapter two, according to Phil Green and Louise Olivier:<sup>30</sup>

"A mechanism for challenging results is desirable at every stage of the vote counting process. This helps to ensure that the election process is transparent, that election authorities are accountable, and that the election outcome is acceptable to all parties. Aggrieved parties and candidates must be able to challenge results based on factual information and are entitled to an independent and fair hearing on the merits of their case."

To protect the right of a candidate in such situation, it is submitted that the relevant provision need to be improved by providing the right of a candidate (not only his/her political party) to seek redress by submitting an election petition. In the 2004 General Elections, there were 23 of 24 political parties which submitted election petitions. In each of these petitions, one political party can contest the general election result in more than one constituency, such as the Welfare Justice Party (*Partai Keadilan Sejahtera*) which contested the result of the general elections for members of DPR/DPRD in 24 constituencies. The National Mandate Party (*Partai Amanat Nasional*) in its petition contested the results of the general elections in 20 constituencies. From at least 252 cases of petitions contesting the general election result at the time, only 23 of them were granted by the Constitutional Court.

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<sup>30</sup> Phil Green and Louise Olivier, "Challenging Results (Mechanisms for Challenging Results)" August 10, 2007. <http://aceproject.org/ace-en/topics/vc>

Despite the fact that each party may have a right to submit complaint, only parties which are eligible to have a legal standing to submit a petition against a general election result (election petition) to the Constitutional Court are those participating in the General Elections.<sup>31</sup> The definitions of “parties” mentioned here differ according to the type of election. In the DPR/DPRD election, such parties are the political parties<sup>32</sup> and in the DPD election such parties are Indonesian citizens<sup>33</sup> who compete as independent candidates for the members of the DPD.<sup>34</sup>

The petition submitted to the Constitutional Court shall contain assumptions concerning the alleged miscalculation of votes by the KPU, a statement on the correct calculation according to the petitioner, a petition to cancel the general election result announced by KPU, followed by a declaration that the correct calculation of votes is the one stated by the petitioner.<sup>35</sup>

One may then ask, what will happen if a contradictory process takes place? If, for example, the Constitutional Court decided that there is a miscalculation caused by prohibited conducts as explained in section 140 sub sections (1) to (4) *Law No. 12 of 2003*, can such decision be used as a ground for the law enforcement agency to prosecute the offender? Basically, there is no provision regarding this issue, neither in terms of prohibiting nor permitting it. Nevertheless, this kind of issue is difficult to process since the initiative to submit the reports/findings is held by *Panwaslu* to the investigator according to a certain limited period. By the time the process in the Constitutional Court is completed, the overall time limit allocated for the process (investigation and prosecution) will have been exceeded.

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<sup>31</sup> Section 74 (1) of *Law Number 24 of 2003*.

<sup>32</sup> For the DPR and DPRD elections, the petitioners are the political parties which nominate candidates; therefore, the candidate does not have legal standing to submit an election petition to the Constitutional Court.

<sup>33</sup> Since the participants in the General Election for the members of DPD are individuals (instead of political parties), such candidates are the parties who become the petitioners in the Constitutional Court.

<sup>34</sup> House of the Regional Representatives (*Dewan Perwakilan Daerah*).

<sup>35</sup> Section 5 (4) (b) of the *Regulation Number 04/PMK/2004*; See also Sections 75 and 31 (1) (b) of *Law Number 24 of 2003*.

In respect to this particular issue, it would be enlightening to discuss the *Reform Star Party (Partai Bintang Reformasi/PBR) case*.<sup>36</sup> Based on the Constitutional Court's decision, *Panwaslu* of West Kalimantan Province had processed the criminal case, but then they found obstacles in doing so. Due to certain reasons (such as procedural reason), the police department had never forwarded this case to the Public Prosecutor. Furthermore, the criminal proceeding of this case was finally put to an end though the Constitutional Court clearly stated that there were election offences committed during the election process.

This problem itself was revealed after two different versions of vote calculation were found in the Sintang Municipality Election Commission (West Kalimantan Province). The evidence provided by the petitioner (Reform Star Party) had received support from the Chairperson of the Sintang Municipality Election Commission, Dra. Hj. Musjahadah. On the contrary, four other members of the Sintang Municipality Election Commission (Victor Emanuel, Eweddy Fahruk, Gusti Sumarman, and Nekodimus) denied the validity of the petitioner's findings. According to them, the accurate data was the one which had been presented during the Constitutional Court proceeding.

In the Court, it was then found that the data submitted by these four members of the Sintang Municipality Election Commission was not the one acknowledged by the General Election Commission. This means that their version of vote calculation was different to that of the General Election Commission, and thus their statements were insufficient to deny the petition.

Regarding the mode of settlement and ground of petition, from the above-mentioned discussion it can be concluded that the legal framework of elections in Indonesia has already

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<sup>36</sup> Case No 028/PHPU.C1-II/2004.

provided for the protection for an aggrieved party to seek redress through election petition. The Constitutional Court is the only judicial institution which has authority to handle such election dispute. However, at the meantime, the dispute over regional elections (Pilkada) is still handled by the Supreme Court. In the near future, all kind of election result dispute is to be settled by the Constitutional Court.

This arrangement is quite clear and can be regarded as a significant improvement compared to the previous legal framework applied in Indonesia. Before the implementation of such mechanism, there were difficulties faced by the opposition parties to challenge election result. The absolute decision of election result was made by the General Election Institute (LPU), an official body under the Ministry of Home Affairs. The other positive thing is the fact that the Constitutional Court focuses only on four main legal problems (including election dispute) and makes its decision more accurate than that of the Supreme Court, which has to handle various legal problems.

This kind of arrangement is in accordance with international standards which provide no rigid institutional form to handle election dispute. Related to the standard, it is provided that:

“The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent electoral management bodies (EMB) or court when an infringement of electoral rights is alleged to have occurred. The law must require that the appropriate EMB or court render a prompt decision to avoid aggrieved party losing his/her electoral right.”<sup>37</sup>

With regard to ground of petition, the only ground for submitting an election petition is one that involves an assumption of vote miscalculation announced by KPU. Therefore, the occurrence of election offences cannot be used as a ground to submit a petition over the general election result to the Constitutional Court.

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<sup>37</sup> International IDEA, *International Electoral Standards, Guidelines for Reviewing the Legal Framework of Elections*, (Stockholm: International Institute for Democracy and Electoral Assistance, 2002) at 93-94.

It is submitted that this very narrow and limited ground of petition is insufficient to protect the election process from irregularities which may affect the election result. Beside, such narrow provision can be used by corrupt politicians or political parties to commit various kinds of offences without fear that their election result would be voided through an election petition.

As mentioned in chapter two, the United Nations guidelines affirm that:

“...the national electoral law must protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice. Civil and criminal liability should be imposed for the acts of misfeasance, nonfeasance and malfeasance by election officials. The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the power of the independent judicial body charged with such review. The effect of irregularities on the outcome of elections must be established by law.”<sup>38</sup>

By using systematic interpretation, ground of election petition should comprise those offences which highly influence the result of an election process. It is therefore important to improve the Indonesian legal framework by adding certain election offences (such as bribery, manipulation of documents for registration and candidacy, illegal campaign fund) into grounds of election petition.

## 6.2.2 Election Petition in Malaysia: Grounds and Process

The *Election Offences Act 1954* provides two grounds for disputing or rejecting the general election result, i.e., avoidance by conviction in a criminal court<sup>39</sup> and avoidance of election on election petition.<sup>40</sup> In *Hamad Bin Mat Noor v Tengku Sri Paduka Raja & 2 Ors*,<sup>41</sup> the legal issue was on whether there is more than one ground for the avoidance of an election.

<sup>38</sup> United Nations, op.cit., 82.

<sup>39</sup> Part VI Section 31 of the *Election Offences Act 1954*.

<sup>40</sup> Part VI Section 32 of the *Election Offences Act 1954*.

<sup>41</sup> *Hamad Bin Mat Noor v Tengku Sri Paduka Raja & 2 Ors* [1993] 2 AMR 33 quoted in Tunku Sofiah Jewa, *Malaysian Election Laws*, Vol.III, (Kuala Lumpur: Pacifica Publications, 2003) at 1322-1330.

The judge affirmed that Part VI of the Act provides two types of grounds for the avoidance of elections – one, by reason of conviction in a criminal court under section 31, and two, by the findings made by an election judge by way of a petition submitted to him based on any of the grounds set out in section 32.

Different from Indonesia, where rules concerning election petition are not stipulated in the General Election Law (*Law No. 12 of 2003*) but in the Constitutional Court law (*Law No. 24 of 2003*) as an institution authorised to settle election petition; in Malaysia, the provisions concerning election petition are stipulated in the *Election Offences Act 1954* especially in Part VII which regulates the administering judge, entities who may present the petition, relief which may be claimed, and time for presentation.



According to the Federal Constitution, no elections of the House of Representatives or the Legislative Assembly of a state shall be called in question except by an election petition presented to the High Court having jurisdiction in which the election was held.<sup>42</sup>

In Malaysia, every petition is tried by the Chief Judge or by a judge of any High Court nominated by the Chief Judge.<sup>43</sup> It is now possible for a Chief Judge to appoint a judge of any High Court in Malaysia, including those of which the appointee may not be a judge under that High Court, provided that Chief Judge consults the Chief Judge of the appointee's High Court concerning the appointment.<sup>44</sup>

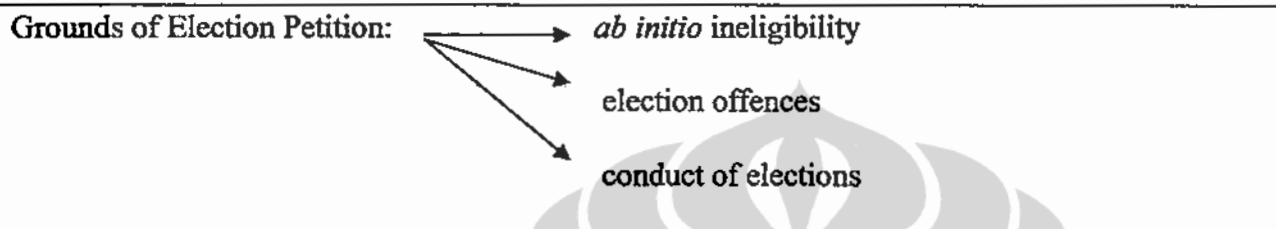
<sup>42</sup> The Federal Constitution, Article 118.

<sup>43</sup> *Election Offences Act 1954*, section 33 (1).

<sup>44</sup> Rachagan, Sothi, *Law and the Electoral Process in Malaysia*, (Kuala Lumpur: University of Malaya Press, 1993) at 198. See *Election Offences Act 1954* section 33 (1) and the *Courts of Judicature (Amendment) Act 1994 (Act*



What are the eligible grounds (particularly offences) for submitting an election petition in Malaysia? The answer to this question may be found in the stipulations found in section 32 of the *Election Offences Act 1954*. In this law, five grounds of petition submission are explained, and they can be placed into three categories: a) *ab initio* ineligibility; b) election offences (comprising of three grounds);<sup>45</sup> and c) conduct of the elections.<sup>46</sup>



As has been mentioned, the election offences category can be further divided into three sub-categories of offences. Two among them include: (1) corrupt or illegal practice by the candidate or with the candidate's knowledge or consent, or by any agent of the candidate; and (2) general bribery, treating, intimidation or other misconducts and circumstances which have so extensively prevailed that they may have reasonably affected the result of the election.

The first sub-category can be seen as an open one in terms of limitations, meaning that it is not limited as to elaborate what sort of corrupt or illegal practices may be used as a ground for an election petition. Therefore, any type of such practices may be eligible to fulfil the requirements of the first category for submitting a petition, bearing in mind that they must at least possess either of these criteria: committed by the candidate, occurred with the candidate's knowledge or consent, or done by any agent of the candidate. On the other hand, the stipulations

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4886). In Malaysia there are two High Courts, being (i) High Court of Malaya, and (ii) High Court of Sabah and Sarawak. Each of the High Court has a Chief Judge as its most senior judge.

<sup>45</sup> The first of these pertains to the appointment of the election agent or other agents and canvassers. The second category of offences pertains to corrupt or illegal practice by the candidate or with the candidate's knowledge or consent, or by any agent of the candidate. The third category of election offences comprises general bribery, treating, intimidation or other misconduct and circumstances which have so extensively prevailed that they may reasonably be supposed to have affected the result of the election. See Racahagan, id at 212-214.

<sup>46</sup> Id at 210.

made by the second sub-category imply not on the issue concerning the illegal nature of the actions, but rather on whether or not the results of the elections are affected by such actions.<sup>47</sup>

Hence, the answer to the above question is clear, i.e., any type of corrupt or illegal practices can be used as a ground for the submission of an election petition, as long as the practice fulfils the criteria of either, i.e., committed by the candidate, occurred with the candidate's knowledge or consent, or done by any agent of the candidate.

In Malaysia, the settlement of petitions concerning election offences is conducted by the Election Court, instead of a criminal court. The provisions regarding the role of the election court is elaborated in the *Election Offences Act 1954*. In this phase of settlement, there is no specific role to be assumed by the police or the public prosecutor. The party who feels aggrieved by the decision of the Election Commission of Malaysia can directly submit its petition to the Election Judge. Meanwhile, the role of the criminal court along with other institutions integrated within the criminal judiciary system (i.e. the police and the public prosecutor) will only deal with the criminal aspect of the said case.

Therefore, the distinction between the two categories of cases can be concluded as follows. The settlement of election offences is conducted in the criminal court by the institutions integrated in the criminal justice system, i.e., the police, the public prosecutor and the court; while the settlement of election offences as the grounds of election petition is conducted by the Election Judge.

An election petition may be presented to the High Court by either of the following category of persons: (a) those who voted or had a right to vote at the election to which the

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<sup>47</sup>Rachagan, id at 214.

petition relates; (b) those claiming to have a right to be returned or elected at such election; and (c) those claiming to have been a candidate at such election.<sup>48</sup>

By virtue of the *Election Offences Act*, the elements of relief which may be claimed by the petitioner in light of the petition he/she has made are – a declaration that the election is void; a declaration that the person was not duly elected or ought not to have been returned; a declaration that any candidate was duly elected and ought to have been returned; and where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.<sup>49</sup>

According to the *Election Offences Act*, an election for the House of Representatives or the legislative assembly of a state can only be called in question by an election petition presented to the High Court which jurisdiction include where the election was held.<sup>50</sup> Rules which are used by the High Court (*Mahkamah Tinggi*) to handle election petitions are the same as the rules regarding the trial of other cases. The High Court can summon witnesses to appear before the court and such witnesses can be examined and instructed to provide information in such trial. Anyone unwilling to perform the instruction of the High Court can be sanctioned with contempt of court.<sup>51</sup>

The procedures related to the submission of an election petition are explained in the *Election Offences Act 1954* and its rules are further described in detail within schedule II of the Act. A petition must be presented within 21 days since the date of publication of the result in the Gazette, in which the day after the publication is counted as the first day.<sup>52</sup>

<sup>48</sup> Section 34 of the *Election Offences Act*. See also Rachagan, id at 198-199.

<sup>49</sup> Section 35 of the *Election Offences Act*.

<sup>50</sup> The Federal Constitution, Article 118; see also Rachagan, op.cit., 198.

<sup>51</sup> Section 33 (2) and (3) of the *Election Offences Act*; see also Mohd. Salleh Abas, *Pilihanraya Malaysia, Kuala Lumpur*, (Kuala Lumpur: Dewan Bahasa dan Pustaka Kementerian Pendidikan Malaysia, 1987) at 53.

<sup>52</sup> Section 38 of the *Election Offences Act*. See also Rachagan, op.cit., 202.

After the trial, the judge must prepare a verdict and deliver it to the election commission. The decision can be utilised as a declaration resulting in the obligation of authorities to accordingly alter the results of the general elections (*pilihanraya*). If the report prepared by such judge states that someone has committed any corrupt practices or illegal practices within the election, the final decision will be the same as if he is found guilty of conducting such actions by the High Court. Thus, if the reported person is an elected candidate, then his candidacy will be cancelled.<sup>53</sup>

Even though provisions regarding election petitions have been stipulated to allow better opportunities for any aggrieved party in a general election to submit their petition, not all objections can be legally acknowledged as election petitions. For parties competing in a general election, it is very burdensome to submit an election petition. This is due to the expensive cost required to do so. For example, the deposit required to register a settlement request in the High Court is RM 10,000.<sup>54</sup> If these parties consider that their petitions will not be too beneficial for themselves, they will rather prefer to merely accept the announced general election result.<sup>55</sup>

This condition is very similar with what we may discover in England where general election petitions are very rare. According to Brian Thompson, this may be partially explained by understanding the nature of such petition. In England, an election petition is legally perceived as a private action brought by the petitioner against the respondent. Therefore the petitioner must present a security of £ 5,000 when presenting the petition.<sup>56</sup>

Such payment is not uncommon, since the petition settlement process applies a civil proceeding in which one of its features involves the requirement for the disputes to pay a certain

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<sup>53</sup> Mohd. Salleh Abas, *op.cit.*, 55.

<sup>54</sup> Second Schedule [Section 42 (1)] of the *Election Offences Act 1954*.

<sup>55</sup> Wan Nik Wan Yussof, *op.cit.*, 71.

<sup>56</sup> Thompson, *op.cit.*, 161.

.. of money. In this case, according to the civil procedure law, the payment covers three things: summons, information, and stamp.<sup>57</sup> To sum up, it can be related to international standards which maintain that:

“...the national electoral law must protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice. Civil and criminal liability should be imposed for the acts of misfeasance, nonfeasance and malfeasance by election officials. The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the power of the independent judicial body charged with such review. The effect of irregularities on the outcome of elections must be established by law.”<sup>58</sup>

As previously mentioned, by using systematic interpretation, the provision should be interpreted that the ground of election petition should comprise offences which highly influence the election process. Seen from this provision, it can be concluded that the rules concerning ground of election petition in Malaysia is in line with such standard. In addition to that, the role and function of Election Judge to settle an election petition has complied with the standard because this special judge can focus to settle election dispute only, rather than settle many categories of other legal disputes.

### 6.2.3 Election Petition in Singapore: Grounds and Process

Just like the nature of other issues within the comparison of both nations, there are similarities between Singapore's legal framework and that of Malaysia. According to the *Parliamentary Elections Act*, there are two grounds which can be used to contest or challenge the general election result, i.e. avoidance by conviction of candidate and avoidance of election on an

<sup>57</sup> Section 4 *Law No. 14 of 1970*; Sections 121 and 182 of *Herziene Inlands Reglement (HIR)*. Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia [Indonesian Civil Procedure Law]*, 6th edition, (Yogyakarta: Liberty, 2002) at 17.

<sup>58</sup> United Nations, op.cit. 82

election petition. The first ground is affirmed in section 89 of the Act, which states that: "The election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice."

Meanwhile the second ground is avoidance of election on election petition. In this case, section 90 states:

"The election of a candidate as a Member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge: (a) that by reason of general bribery, general treating, or general intimidation, or other misconducts, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate or group of candidates whom they preferred; (b) non-compliance with the provisions of this Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in those provisions and that the non-compliance affected the result of the election; (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate; (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that the person had, within 7 years prior to the engagement, been convicted or found guilty of a corrupt practice by a District Court or by the report of an Election Judge; (e) that the candidate was at the time of his election a person disqualified for election as a Member."

Both the contents and formulation of the provisions are very similar to sections 31 and 32 of Malaysia's *Election Offences Act 1954*, except for the types of the court in item (d), that is, between Singapore's District Court and Malaysia's Sessions Court.

Similar to our previous conclusion over the Malaysian *Election Offences Act*, any type of corrupt or illegal practices in Singapore can be used as a ground for the submission of an election petition, especially if it is committed by the candidate, or with the candidate's knowledge or consent, or done by any agent of the candidate.

By considering the similarities between Malaysia's and Singapore's legal frameworks described above, it can be observed the similarity between both countries in terms of the

settlement of election petitions. In both countries such role is given to by the Election Judge in the High Court.

According to the *Parliamentary Election Act*, an election to the House of Representative or the legislative assembly of a state can be called in question only by an election petition tried by the Chief Justice or by a Judge of the Supreme Court nominated by the Chief Justice for the purpose.<sup>59</sup> The Chief Justice or the nominated Judge is referred to in this Act as the Election Judge.<sup>60</sup>

Regulations which are used by the High Court to settle election petitions are the same as the regulations regarding the proceeding of other cases. The High Court can summon witnesses to appear before the Court and such witnesses can be examined and instructed to provide information in such court. Anyone unwilling to perform the instruction of the High Court can be sanctioned with contempt of court.<sup>61</sup>

An election petition may be presented to the High Court by either of the following category of persons: (a) those who voted or had a right to vote at the election to which the petition relates; (b) those claiming to have a right to be returned or elected at such election; and (c) those alleging to have been a candidate at such election.<sup>62</sup>

According to the *Parliamentary Election Act*, the elements of relief which may be claimed by the petitioner in light the petition he/she has made are: a declaration that the election is void; a declaration that the person was not duly elected or ought not to have been returned; a declaration that any candidate was duly elected and ought to have been returned; and where the

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<sup>59</sup> Section 92 (1) *Parliamentary Election Act*.

<sup>60</sup> Section 92 (2) *Parliamentary Election Act*.

<sup>61</sup> Section 92 (3), (4), and (5) *Parliamentary Election Act*.

<sup>62</sup> Section 93 *Parliamentary Election Act*.

seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.<sup>63</sup>

The procedures related to the submission of an election petition are explained in the *Parliamentary Election Act* and its rules are further described in detail within the Fourth Schedule of the Act. A petition must be presented within 21 days from the date of publication of the result in the Gazette, in which the day after the publication is counted as the first day.<sup>64</sup>

The procedures and practices on election petitions are regulated by rules, which may be made by the Rules Committee constituted and appointed under section 80 of the *Supreme Court of Judicature Act* (Cap. 322).<sup>65</sup> The presentation of an election petition shall be made by delivering it to the office of the Registrar.<sup>66</sup> An election petition shall contain the statements that: (a) state the right of the petitioner to petition within section 93 of the Act; (b) state the holding and result of the election, and (c) shall briefly state the facts and grounds relied on to sustain the prayer. The petition shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, as the case may be, and shall be signed by all the petitioners.<sup>67</sup>

So far, there has yet to found any case that could be categorised as an election petition case in Singapore. In Singapore's history of elections, there were only two cases which can be perceived to be very much similar with election petitions. Unfortunately, these two cases (*Jeyaretnam Case* and *Tang Liang Hong Case*) were often cited by observers as well as opposition parties as evidences that Singapore's election has never been free. This is due to the

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<sup>63</sup> Section 94 the *Parliamentary Election Act*.

<sup>64</sup> Section 97 (1) the *Parliamentary Election Act*.

<sup>65</sup> Section 100 the *Parliamentary Election Act*.

<sup>66</sup> Section 4 (1) the *Parliamentary Election Petition Rules*.

<sup>67</sup> Section 5 (1) the *Parliamentary Election Petition Rules*.



fact that opposition statements would always be brought to court as defamation cases. Judge Paul Bentley<sup>68</sup> describes the *Jeyaretnam case* as follows.

“...The Jeyaretnam case raises a question as to the real reason why this defamation action was brought: Was it a matter of injured feelings or damaged reputations, or simply a matter of political expediency? The Prime Minister has decided to appeal the decision, lending support to the belief that the latter consideration was the real motivation. Amnesty International has stated that the disproportionate use of civil defamation suits by the government has had a chilling effect on Singapore's political life. The agency believes that the government's resort to civil defamation suits has intimidated and deterred those Singaporeans who would dare to express dissenting views. This strategy, concludes Amnesty International, may have a more insidious and dampening effect on free political speech in Singapore than their obviously condemnable Internal Security Act - civil defamation actions may appear to be relatively innocuous and certainly attract much less international attention than does detention without trial! The issue of whether the filing of defamation suits affects freedom of expression and peaceful democratic discourse in Singapore is beyond question for me. The more pressing concern is whether international condemnation of the practice and faint signs of growing domestic distaste for it, will be sufficient to change the government's tactics against its political opponents.”

Observed from ground of election petition issue, it is quite clear that the rules governing such matter in Singapore are very similar to that of Malaysia. Hence, the conclusion is similar, that the rules are quite in line with international standards. However, as has been discussed in Chapter 3, there are some issues concerning democracy, electoral system and election process in Singapore which are not fully in line with international standards, such as no independent electoral management bodies, no independent boundary delimitation body, and very limited freedom to speak particularly for the opposition. This sort of condition is not conducive for the opposition to submit criminal complaint to police or election petition to Election Judge.

Compared to Indonesia, Malaysia, and the Philippines the said situation in Singapore is completely different. In these three neighbouring countries, there were many cases submitted by different parties (including opposition party and candidate) to the criminal justice system and to

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<sup>68</sup> <http://www.singapore-window.org/80217can.htm> quoted on November 12, 2007.

Election Judge (Election Court). If the situation is still perceived as non democratic and tend to intimidate opposition parties, it is difficult to state that there is a “level playing field” which highly essential for holding free and fair elections.

#### **6.2.4 Election Petition in the Philippines: Grounds and Process**

This part can be distinguished into two issues: pre-proclamation controversy and election contest. The definitions and the differences between these two actions will be discussed as follows.

##### **Pre-proclamation Controversy**

In the Philippines, there are two provisions which may enable a party to challenge an election result: (i) the provisions regarding pre-proclamation controversy and; (ii) the provisions regarding election contest. The former deals mostly with complaints during canvassing; while the latter deals with challenges to the proclaimed result.

Through the pre-proclamation controversy provision, Comelec can order the partial or total suspension of the proclamation of any candidate or annul partially or totally any proclamation; on the other hand, avoidance of election result through election contest is stipulated in section XIX of the *Omnibus Election Code* of the Philippines.

As the name suggests, pre-proclamation cases arise, prior to the proclamations made during the “canvass,” or the counting and tabulation phase. Herein, all complaints are filed under Comelec’s jurisdiction and most of these cases are decided summarily by Board of Election Inspectors (BEIs) and canvassing boards. Once proclamation takes place, all outstanding cases or appeals are automatically dismissed. The complainant’s only recourse then is to file an election

protest. Pre-proclamation cases cannot be filed towards the canvassing, at any level, of returns for House, Senate, and presidential races.<sup>69</sup>

A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly to Comelec, or any matter raised under sections 233 (when the election returns are delayed, lost or destroyed), 234 (material defects in the election returns), 235 (when election returns appear to be tampered with or falsified) and 236 (discrepancies in election returns) in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.<sup>70</sup>

The Comelec has exclusive jurisdiction over all pre-proclamation controversies. It may by *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate or annul partially or totally any proclamation if one has been made, as the evidence shall warrant in accordance with the succeeding sections.<sup>71</sup>

What is the effect of filing a petition to annul or suspend a proclamation? The filing with Comelec of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.<sup>72</sup> There are several issues that may be raised in pre-proclamation controversy, i.e.,<sup>73</sup>

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<sup>69</sup> Philippines Election Observation Program Strengthening the Electoral Process, IFES Final Report, August 2004, at 26-27.

<sup>70</sup> Section 241 *Omnibus Election Code*.

<sup>71</sup> Section 242 *Omnibus Election Code*.

<sup>72</sup> Section 248 *Omnibus Election Code*.

<sup>73</sup> Section 243 *Omnibus Election Code*.

Ground of Pre-proclamation Controversy

- a. illegal composition or proceedings of the board of canvassers<sup>74</sup>
- b. the canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies
- c. the election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic
- d. when substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates

Notwithstanding the tendency of any pre-proclamation controversy, Comelec may, *motu proprio* or upon the filing of a verified petition and after due notice and hearing, order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.<sup>75</sup>

Pre-proclamation controversies are limited to challenges directed against the Board of Canvassers and proceedings before the board in relation to particular election returns to which private respondent should have made specific verbal objections which are subsequently reduced to writings. A pre-proclamation controversy is limited to an examination of the election returns on their face. As a rule, Comelec is limited to an examination of the election returns on their face.<sup>76</sup>

<sup>74</sup> Section 244. Contested composition or proceedings of the board. When the composition or proceedings of the board of canvassers are contested, the board of canvassers shall, within twenty-four hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the Commission within five days after the ruling with proper notice to the board of canvassers. After due notice and hearing, the Commission shall decide the case within ten days from the filing thereof.

<sup>75</sup> Section 247 of the *Omnibus Election Code* of the Philippines

<sup>76</sup> *Bandala v Comelec*, G.R. No. 159369, March 3, 2004, 424 SCRA 267, 274

Section 241 of the *Omnibus Election Code* defines a pre-proclamation controversy as “any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.”

The issues that may be raised in a pre-proclamation controversy are restrictive and exclusive. Hence, there should be further clarifications on what constitutes the grounds for pre-proclamation controversy and regular election protest.

In *Antenor A. Arbonida v Commission on Elections and Romeo C. Caringal case*,<sup>77</sup> Arbonida and Caringal were candidates for the Sangguniang Bayan of Tanza, Cavite during the May 10, 2004 synchronised national and local elections. After the canvassing of votes on May 12, 2004, the Municipal Board of Canvassers proclaimed Arbonida the eighth winning candidate with 14,620 votes as against the 14, 552 votes of Caringal.

On June 16, 2004, Caringal filed a petition with Comelec seeking to annul Arbonida’s proclamation on the ground of manifest errors found within the statement of votes by precinct. Arbonida then argued that Comelec had no jurisdiction because this did not constitute an issue of manifest error but rather a ground for an election protest. He also claimed that a pre-proclamation controversy was no longer viable after the proclamation of the winning candidate had been made.

In this case, the legal issue is whether the filed petition is proper subject of a pre-proclamation controversy. The *Omnibus Election Code* defines a pre-proclamation controversy as follows.

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<sup>77</sup> G.R. No. 167137, *En Banc*, March 14, 2007.

Sec. 241. Definition – A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board or canvassers which may be raised by any candidate or by any registered political parties before the board or directly with the Commission, or any matter raised under sections 233,234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

In this case, the petition filed by Caringal before Comelec involves a pre-proclamation controversy and not an election contest. Although the petition alleged the existence of a fraudulent action, the remedy sought was merely for correction of erroneous entries in the statements of votes which were based on the election returns.

In *Dr. Rolito A. Pahilan v Comelec, et al.*,<sup>78</sup> the question was on what issues may be raised as a pre-proclamation controversy. In this case, section 243 of the *Omnibus Election Code* has restrictively enumerated such issues as follows.

Section 243. Issues that may be raised in pre-proclamation controversy. The following shall be proper issues that may be raised in a pre-proclamation controversy:

- [a] Illegal composition or proceeding of the board of canvassers;
- [b] The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the returns or in other authentic copies thereof as mentioned in section 233, 234, 235 and 236 of this Code;
- [c] The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic;
- [d] When substitute or fraudulent election return in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The judge affirmed that plainly, the grounds relied upon by petitioner, namely, vote-buying and misappreciation of votes, are not included in the above enumeration. It is settled jurisprudence that vote-buying, as in the case at bar, is among the proper grounds for an election protest which is within the scope of the Regional Trial Court's jurisdiction.

On the basis of election returns which, on their face, appear regular and wanting of any physical signs of tampering, alteration, or other similar vice, the Commission on Elections

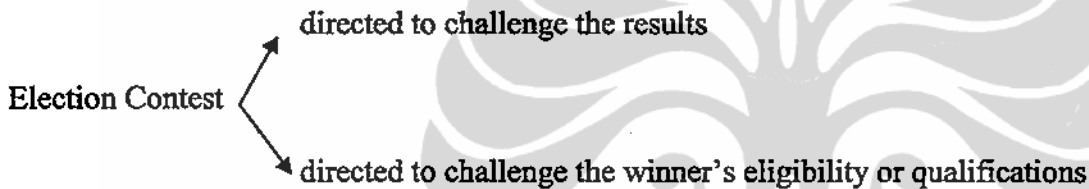
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<sup>78</sup> [G.R. No. 142970. June 20, 2000], *En Banc*.

cannot justifiably exclude the said returns on the occasion of a pre-proclamation controversy whose office is limited to incomplete, falsified or materially defective returns which appear as such on their face.

### **Election Contest**

Election contests are cases brought after proclamation. These include two types: election protest cases, which are directed to challenge the results, and “*quo warranto*” cases, which are directed to challenge the winner’s eligibility or qualifications to take office.



The process of election contest itself is complex and multi-layered. Disputes concerning Barangay and municipal offices are heard by municipal and regional trial courts. Appeals may be brought to Comelec, which also functions to hear disputes concerning regional, provincial, and city offices.

Disputes concerning elections for the House of Representatives and the Senate are heard by special tribunals set up for this purpose: (i) The House of Representatives Election Tribunal (HRET) and (ii) the Senate Electoral Tribunal (SET). The Supreme Court, sitting *en banc*, hears disputes concerning the presidential or vice presidential races. Decisions made by Comelec or the House and Senate Election Tribunals may be appealed to the Supreme Court, but only on

*certiorari*. The Supreme Court's decision concerning presidential or vice-presidential races is final.<sup>79</sup>

Different from the settlement for all pre-proclamation controversies as mentioned before, issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate Comelec to pierce the veil of election returns which appear to be *prima facie* regular, on their face, are anathema to a pre-proclamation controversy.

Such issues should be posed and resolved in a regular election protest, which is within the original jurisdiction of the Regional Trial Court (RTC).<sup>80</sup> In a regular election protest, the parties may litigate all the legal and factual issues raised by them inasmuch detail as they may deem necessary or appropriate.<sup>81</sup> It is beyond Comelec's jurisdiction to go beyond the face of the returns or investigate election irregularities.<sup>82</sup>

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<sup>79</sup> Philippines Election Observation Program Strengthening the Electoral Process, IFES Final Report, August 2004, at 27-28.

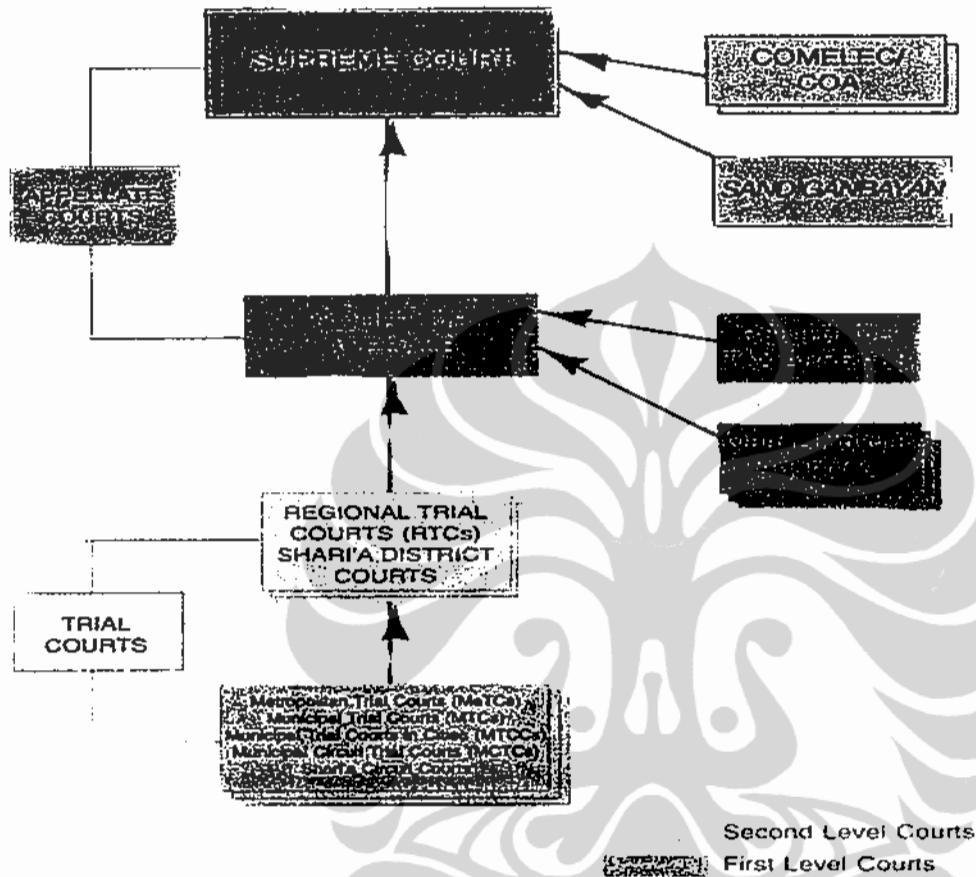
<sup>80</sup> *Id* at 186.

<sup>81</sup> *Bandala case*, *op.cit.*, 276.

<sup>82</sup> *Matalam v Comelec*, G.R. No. 123230, April 18, 1997, 271 SCRA 733, 745.



**THE HIERARCHY OF COURTS IN THE PHILIPPINES**  
 (Relationships between and among the courts in terms of jurisdiction)



Source: 2002 Revised Manual of Clerks of Court. Manila, Supreme Court, 2002

Different to the legal framework of elections in Indonesia, Malaysia and Singapore, in the Philippines, Comelec has a role in the settlement of contest over the election result. The Commission shall be the sole judge of all contests relating to elections, returns, and

qualifications of all Members of the *Batasang Pambansa*, elective regional, provincial and city officials.<sup>83</sup>

For all contests relating to the election, returns, and qualifications of Members of the Senate and the House of Representatives, the Senate or the House of Representatives Electoral Tribunal is the sole judge.<sup>84</sup>

For other contests, three kinds of settlement are available: (1) Election contests for *Batasang Pambansa* regional, provincial and city offices, (2) Election contests for municipal offices, and (3) Election contest for *barangay* offices. The Commission conducts settlement for number (1), while settlement for case number (2) is conducted by the proper regional trial court. Meanwhile, the settlement for case number (3) is conducted by the proper municipal or metropolitan trial court.

In light of these categories, Comelec hereby functions in cases involving the exercise of its (1) exclusive original jurisdiction over election protests or *quo warranto* involving elected regional, provincial and city officials, and (2) appellate jurisdiction over all election protest on *quo warranto* involving elective municipal and *barangay* officials.

In the election contests for *Batasang Pambansa*, regional, provincial and city offices, a sworn petition contesting the election of any Member of the *Batasang Pambansa* or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.<sup>85</sup> This law also affirms that the Commission shall decide all election cases brought before it within ninety days from the date of their submission

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<sup>83</sup> Section 249 of the *Omnibus Election Code* of the Philippines.

<sup>84</sup> Article VI, Section 17 of the Constitution of the Philippines.

<sup>85</sup> Section 250 of the *Omnibus Election Code* of the Philippines.

for decision. The decision of the Commission shall become final thirty days after receipt of judgment.<sup>86</sup>

Meanwhile, in the election contests for municipal offices, a sworn petition contesting the election of a municipal officer shall be filed with the proper Regional Trial Court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election.<sup>87</sup>

The last one, in the election contest for *barangay* offices, a sworn petition contesting the election of a *barangay* officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.<sup>88</sup>

The law also states regarding preferential disposition of contests in courts. The courts, in their respective cases, shall give preference to election contests over all other cases, except those of *habeas corpus*, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same.<sup>89</sup> With respect to the issue of appeal, the law states that:

Appeals from any decision rendered by the regional trial court under section 251 and paragraph two, section 253 hereof with respect to *quo warranto* petitions filed in election contests affecting municipal officers, the aggrieved party may appeal to the Intermediate Appellate Court within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the court. The appeal shall be decided within sixty days after the case has been submitted for decision.<sup>90</sup>

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<sup>86</sup> Section 257 *Omnibus Election Code* of the Philippines.

<sup>87</sup> Section 251 *Omnibus Election Code* of the Philippines.

<sup>88</sup> Section 252 *Omnibus Election Code* of the Philippines. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the case within thirty days from its submission, and whose decisions shall be final.

<sup>89</sup> Section 258 *Omnibus Election Code* of the Philippines.

<sup>90</sup> Section 256 *Omnibus Election Code* of the Philippines.

With regard to election contests for *Batasang Pambansa*, regional, provincial and city offices, a sworn petition contesting the election of any Member of the *Batasang Pambansa* or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.<sup>91</sup>

Meanwhile, in election contests for municipal offices, a sworn petition contesting the election of a municipal officer shall be filed with the proper Regional Trial Court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election.<sup>92</sup>

Appeals from any decision rendered by the Regional Trial Court under section 251 and paragraph two, section 253<sup>93</sup> petitions filed in election contests affecting municipal officers, the aggrieved party may appeal to the Intermediate Appellate Court within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the court. The appeal shall be decided within 60 days after the case has been submitted for decision.<sup>94</sup>

The Commission shall decide all election cases brought before it within 90 days from the date of their submission for decision. The decision of the Commission shall become final 30 days after receipt of judgment.<sup>95</sup>

By observing the details mentioned in the paragraphs above, it can be concluded that Comelec of the Philippines has a significant role in election petition settlement (especially for contests relating to the elections, returns, and qualifications of all Members of the *Batasang*

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<sup>91</sup> Section 250 *Omnibus Election Code* of the Philippines

<sup>92</sup> Section 251 *Omnibus Election Code* of the Philippines

<sup>93</sup> Para 2, Section 253. Any voter contesting the election of any municipal or *barangay* officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election.

<sup>94</sup> Section 256 *Omnibus Election Code* of the Philippines.

<sup>95</sup> Section 257 *Omnibus Election Code* of the Philippines.

*Pambansa*, elective regional, provincial and city officials). In the other three countries, the election commissions (as parallel comparative counterparts of the Comelec) do not have similar authority to settle election petition. Recognizing such function and authority it is essential that election commissioners should have certain important qualifications, including law and political backgrounds. Beside that, the independent and impartial characteristic of the commissioners are also important.

### 6.3 Burden and Standard of Proof

With respect to burden of proof in election petition process which is civil in nature, the burden of proof in any particular case depends on the circumstances in which the claim arises. In general, the rule which applies is "*Ei qui affirmat, non ei qui negat, incumbit probatio.*" Onus is always on a person who asserts a proposition or fact, which is not self-evident.<sup>96</sup> There is a difference between the standards of proof in criminal and civil proceedings.

There are two standards of proof recognised by the law, they are: (1) proof on a preponderance of probabilities, which is the standard appropriated to civil cases, and (2) proof beyond reasonable doubt, which is the proper standard for a criminal charge.<sup>97</sup> Preponderance of probabilities or preponderance of evidence refer to a condition where the evidence, if defined as a whole, shows that the fact sought to be proved is more probable than not. This also refers to a need of a greater weight of evidence, or to have evidence which is more credible and convincing to the mind, which best accords with reason and probability.<sup>98</sup>

The essential difference between the two standards of proof consists in the effect, in which those who, *ex hypothesi*, believe in the probable existence of a certain state of affairs must

<sup>96</sup> Black, Henry Campbell, *Black's Law Dictionary*, 6th Edition, (St. Paul, Minn: West Publishing Co, 1990) at 96.

<sup>97</sup> *Id* at 1405.

<sup>98</sup> *Id* at 1182.

give to their doubts on the subject. This point has been made with great clarity by Professor Coutts who stated:<sup>99</sup>

“Normally, in civil case, account must be taken of a doubt only if it results in a rational opinion that a fact in issue is less likely than not, whereas in a criminal case account must be taken of a doubt if it results in a rational opinion that the contradictory of the issue is more than a remote possibility.”

There are two proof issues in the election petition: 1) where the burden of proof is standing and in what quality and 2) whether the absence of one party's response will affect the proving process.

The first question which may be raised here is what the standard of proof for an allegation of criminal conduct in civil proceeding. This question is very important in the discussion concerning standard of proof in an election petition (where election offences could be used as a ground). In *Hornal v Neuberger Products Ltd*,<sup>100</sup> the Court of Appeal recognised that the earlier English cases conflicted, and concluded, in apparently general terms, that proof on a preponderance of probability standard would only suffice if the commission of a crime was alleged in a civil action. As cited in *Hornal's Case*, Rupert Cross stated that an allegation of a criminal conduct need only be established on a preponderance of probability in a civil action. In criminal cases, the compelling reason is provided by the paramount importance of the liberty of the subject.<sup>101</sup>

Election petition is not settled in criminal proceeding, but in a process which is similar to a civil proceeding. In the Indonesian civil procedure, it is certainly clear that “whoever claims a right then he/she should prove his/her claim”. In addition, it can be often found within the civil

<sup>99</sup> Cross, Rupert, J.A. Gobbo, and D.M Byrne, *Evidence*, (Sydney-Melbourne-Brisbane: Butterworths, 1970) at 114.

<sup>100</sup> *Hornal v Neuberger Products Ltd* [1957] 1 Q.B. 247; [1956] 3 All E.R. 970 quoted in Cross, *ibid*.

<sup>101</sup> Cross, *op.cit.*, 121-123.

procedures law, the idea which states that “it is often said that the truth, which must be looked for, is formal truth.”

This does not mean that in the civil procedure law, a judge will look for either a vague or false truth. Searching the formal truth means that the judge may exceed the weight or content, however to a width of the inspection by judge. A Judge may not make a decision over an unclaimed case or above the claimed. In searching for formal truth, the civil judge merely proves by “preponderance evidence.”<sup>102</sup>

In Indonesian settlement of election petition, the burden of proof lies (as in civil action) in the hand of the petitioner who submits his/her petition to the Constitutional Court.<sup>103</sup> In the general election result dispute induced by an election petition, the petitioner is obliged to clearly describe the miscalculation of votes announced by the General Election Commission and the correct calculation of votes.<sup>104</sup>

The submission of petition must be supported by evidence which support such petition. This may include, among others, documentary evidence (for example the copy of calculation of votes' certificate or copy of other written documents). If the petitioner intends to present a witness and/or an expert witness, then the list of names and curriculum vitae of the witness and/or expert must also be enclosed.<sup>105</sup> In the proof stage, the evidence from the petitioner are examined, then the information from the defendant, i.e., the General Election Commission, shall be heard, and the defendant's evidence are presented as well as statements of related parties.<sup>106</sup>

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<sup>102</sup> Sudikno, op.cit., 131.

<sup>103</sup> Interview with an Expert of Constitutional Law, Jakarta, February 16, 2005.

<sup>104</sup> Law Number 24 of 2003, section 75.

<sup>105</sup> Constitutional Court Regulation Number 04/PMK/2004, Section 5 (5).

<sup>106</sup> The related parties being referred to herein are the political parties whose acquisition of seats shall be affected by such petition or the candidates of DPD who shall be affected by such petition. Mahkamah Konstitusi [Constitutional Court], *Pedoman Beracara dan Proses Administrasi Perselisihan Hasil Pemilihan Umum di Mahkamah Konstitusi*, [Guidance Book Regarding Procedure of General Elections Settlement in Constitutional Court ], (2004) at 41.

In the court session, the Constitutional Judges examine the petition along with the submitted evidence. For the purpose of examination, the Constitutional Judges are obliged to summon the parties in such case in order to provide necessary information and/or to request written statement to the state institutions related to such petition.<sup>107</sup>

The parties, witnesses and experts being summoned by the Constitutional Court must appear before the court to provide information. If the witness does not appear before the court without any legal excuse after being summoned properly according to law, the Constitutional Court can request police assistance to find such witness.<sup>108</sup>

From the above description, it is clear that the burden of proof lies in the hand of the petitioner, while the defendant must present responses supplemented by evidence. However, the role of the Constitutional Judges is also active, i.e., by requesting the presence or the information from the related state institutions and by instructing the presence of witnesses and experts as well as determining the legality of the presented evidence.

In the case of *Partai Perhimpunan Indonesia Baru*,<sup>109</sup> regarding the alleged vote miscalculation in Medan II Election District, an issue was raised concerning who has the burden of proof. The Constitutional Court held that the burden of proof was in the hand of petitioner who had to prove the vote miscalculations done by the Election Commission of Medan. In fact, the petitioner failed to make correct calculation and the petition was eventually dismissed.

Regarding the standard of proof, *Law Number 24 of 2003* has a provision that is identical to section 183 of KUHAP. The decision taken by the Constitutional Court in the court session is in accordance with the evidence and the judges' conviction. Decision granting the petition must

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<sup>107</sup> *Law Number 24 of 2003*, Section 41.

<sup>108</sup> *Law Number 24 of 2003*, Section 38.

<sup>109</sup> Case No. 011/PHPU.C1-ii/2004.



be based on at least two pieces of evidence. Such decision must also contain the facts disclosed in the court and the judges' consideration, which becomes the ground of such decision.<sup>110</sup>

The evidence which can be used in a court are documentary evidence, witness's information, experts evidence, the parties' information, instructions, and other evidence – which may be presented in the form of being verbally stated, sent, received, or maintained electronically by optical device or anything of the like. Such evidence should be obtained legally. Otherwise, they cannot be used as legal evidence. The Constitutional Court shall then decide the admissibility of such evidence.<sup>111</sup>

By observing these matters, it is submitted that the standard of proof in the election petition process is very similar to the standard of proof used in criminal proceedings. This is reflected from the provisions regarding the minimum limit of evidence and the judge's conviction (compared to the provision in section 183 of KUHAP).<sup>112</sup> Other similarity is that the truth to be searched includes not only formal truth (as it is in civil proceeding), but also material truth. In hearing election contest in Madura (East Java) constituency, the Constitutional Court conducted direct examination by observing several ballot boxes.<sup>113</sup>

In Malaysia, a similar issue to that of above can also be found. What is the difference of proof through the criminal court (as stipulated in section 31) and proof in the Election Court (as stipulated in section 32)? In the *Hamad bin Mat Noor v Tengku Sri Paduka Raja & Ors*,<sup>114</sup> the arising issues were: “whether there is a difference between acts which are criminal in nature and

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<sup>110</sup> Law Number 24 of 2003, Section 45.

<sup>111</sup> Law Number 24 of 2003, section 36.

<sup>112</sup> The judge is not allowed to impose a sanction on anyone unless it is supported by at least two legal evidence, the judge has to be convinced that an offence has been committed and that the defendant is guilty of doing so.

<sup>113</sup> Interview with resource person, Jakarta, 16 February 2005.

<sup>114</sup> *Hamad Bin Mat Noor v Tengku Sri Paduka Raja & 2 Ors* [1993] 2 AMR 33.

acts which constitute grounds to avoid an election” and “whether the standard of proof required in avoiding an election is inflexible.”

In this case, the Court gave a judgment that corrupt practice, which is a criminal offence, must be strictly proved beyond all reasonable doubt by clear and unequivocal evidence. For an act to be criminal in nature, it must entail penal consequences.<sup>115</sup> Meanwhile, the Court also noticed the difference between the standard of proof in a conviction in a criminal court (under section 31) and the standard of proof in an election court (under section 32). If the standard of proof to be applied in a petition before an election judge is the same as in a criminal prosecution, then there is absolutely no necessity to appoint an election judge for the purpose as the Sessions Court Judge can dispose of the matter.<sup>116</sup>

The legislature had delegated to the Election Court at that time to decide the quality of evidence required to prove a case according to its respective circumstances. The court of an Election Judge cannot be conducted as a criminal court and therefore it must be a civil court and no other. It cannot be a hybrid. The standard of proof required under section 32 must be as applied in a civil proceeding, which is on the balance of probabilities.<sup>117</sup>

Based on the above, it is clear that there is a difference concerning the burden of proof between the criminal case and the burden of proof in election petition. In the former, the burden of proof lies on the public prosecutor with the standard being proof beyond a reasonable doubt, while in the latter, the burden of proof lies in the hand of the petitioner with the standard being proof on balance of probabilities.

In election petition, evidence need not be stated in the petition, but the Judge may, upon application in writing by a respondent, order such particulars as may be necessary to prevent

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<sup>115</sup> In the case of section 11 paragraph (1) *Election Offences Act*, the punishment is clearly provided.

<sup>116</sup> Tunku Sofiah Jawa, *op.cit.*, 1323.

<sup>117</sup> *Ibid.*

surprise and unnecessary expense, and to ensure a fair and effective trial upon such terms as to costs and otherwise as may be ordered.<sup>118</sup>

In Singapore's election law, section 92 of the *Parliamentary Elections Act* states that on the trial of an election petition, the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers.<sup>119</sup> The Election Judge may examine any witness so compelled to attend or any person in court, although the witness is not called and examined by any party to the petition.<sup>120</sup> After the examination of a witness by the Election Judge, the witness may be cross-examined by or on behalf of the petitioner and the respondent, or either of them.<sup>121</sup>

In the Philippines, in an election petition certainly the parties submitting petition must explain their petitions and have them supported with evidence. In addition, Comelec and the Court must also be active in discovering the truth. The existence of proof in the election petition displays the effort to discover the material truth. Therefore, it is not only meant to meet formal truth. Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted.<sup>122</sup>

This can also be noticed from the provisions in the procedure for proceeding in the Commission on Election where protests or petitions in ordinary actions, special actions, special cases, special relieves, provisional remedies, and special proceedings, as well as counter-protests,

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<sup>118</sup> In the *Parliamentary Election Rules*, Fourth Schedule, section 100 (2) of the *Parliamentary Election Act*.

<sup>119</sup> Section 92 (4) Any person refusing to obey the order of the Election Judge shall be guilty of contempt of court section 92 (5).

<sup>120</sup> Section 92 (6).

<sup>121</sup> Section 92 (7).

<sup>122</sup> Section 255 of the *Omnibus Election Code* of the Philippines.

counter-petitions, interventions, motions for reconsideration, and appeals from rulings of board of canvassers shall be verified. All answers shall be verified.<sup>123</sup>

However, since it does not imply a criminal proceeding, the standard of proof used therein is not the one “beyond a reasonable doubt.” Such standard is commonly referred to as the balance of probabilities, used in the civil cases. According to Lord Denning, the balance of probabilities means that it does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it requires a degree of probability which commensurate with the occasion.<sup>124</sup>

In *Manuel C. Sunga v Comelec and Ferdinand B. Trinidad*<sup>125</sup> the court ruled that an election offence has both criminal as well as electoral aspects. Its criminal aspect involves the ascertainment of the guilt or innocence of the accused candidate. Like in any other criminal case, it usually entails a full-blown hearing and the quantum of proof required to secure a conviction is beyond reasonable doubt. Its electoral aspect, on the other hand, is a determination of whether the offender should be disqualified from office.

This is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence. Thus, under section 4 of the Comelec rules of procedure, petitions for disqualification “shall be heard summarily after due notice.” It is the electoral aspect that is being discussed here, under which an erring candidate may be disqualified even without prior criminal conviction.

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<sup>123</sup>Section 3 letter (b) of the *Comelec Rules of Procedure* (1993).

<sup>124</sup>See in the case of *Bater v Bater* [1950] 2 All ER 458.

<sup>125</sup> [G.R. No. 125629, Mach 25, 1998].

Another case which is very similar to the one above is the *Domingo v Comelec Case*,<sup>126</sup> in which the judge stated that a petition for disqualification (as election petition), requires merely the determination of whether the respondent committed acts as to merit his disqualification from office, and is done through an administrative proceeding which is summary in character and requires only a clear preponderance of evidence.

In Indonesia, the evidence problem on general election dispute in the Constitutional Court remains a debatable issue<sup>127</sup> because even though it is very close to a civil proceeding,<sup>128</sup> its procedural aspect has more public law character. Accordingly, the procedure law in the Constitutional Court comply with public procedure law principles. A Constitutional Court judge is free to determine what has to be proven in term of whether the burden of proof along with its assessment is legal or not (its admissibility). This principle is called “*vrij bewijs*.”

This principle is fully adopted in the Constitutional Court to give opportunity to its judge to look for substantive truth of evidence. The other principle is the activeness of the judge. The judge has power to command the parties to attend directly the proceeding even though they have been represented by their lawyer. This is done in order to find substantive truth of the witness and explanation of the parties.<sup>129</sup>

It is difficult to find the principle of procedure law of the Constitutional Court within *Law No.24 of 2003* (section 74 to section 79) and *Constitutional Court Regulation No. 04/PMK/2004*

<sup>126</sup> Certiorari assailing the *en banc* resolution of the Commission of Elections (Comelec), December 1, 1998 and the resolution of Comelec on the Comelec First Division dated July 2, 1998 in SPA No. 98-361.

<sup>127</sup> Wasis Susetio, “*Ketika Musim Pemilu Tiba (Tinjauan Terhadap Hukum Beracara di Mahkamah Konstitusi) in Menjaga Denyut Konstitusi* [When Elections Seasons Come], in *Menjaga Denyut Konstitusi* [Defending The Constitutional Throb] (Eds) Refli Harun, Zainal A.M. Husein, and Bisariyanti, op.cit., 390.

<sup>128</sup> The civil procedure character of its process is reflected by section 75 *Law No.24 of 2004* concerning Constitutional Court, which state that the petitioner should describe vote miscalculation and the demand to annul the election result announced by KPU. This is very similar to a provision existed in section 163 HIR (*Herziene Inlands Reglement*) which has a principle that “whoever claims something, he/she should proof it”, Wasis Susetio, id at 390-391. See also Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi RI [The Procedure Law of the Constitutional Court of the Republic of Indonesia]*, (Jakarta: Konstitusi Press, 2005) at 121-122.

<sup>129</sup> A. Fickar Hadjar (et.al), *Pokok-Pokok Pikiran dan Rancangan Undang-Undang Mahkamah Konstitusi* [The Basic Ideas and the Draft of Constitutional Court Law], (Jakarta: KRHN, 2003) at 32-34.

(sections 36 to 39).<sup>130</sup> It seems that the existent rules imply that the duty of the judge is only to look for formal truth.<sup>131</sup> Still, there is also a need to consider that the settlement of election dispute is not only related to the interests of the individual/ private or the political party's as the petitioners or claimers, but also to the public interest (the interests of the voters or people who will be represented in parliament).<sup>132</sup>

Based on the perspective that results of the general election bears the common interests of candidates/parties as well as the public, though the settlement of election petition in Constitutional Court has a character of civil proceeding, the constitution judge should protect the interest of the public with its active character and accurately examine the truth of the evidence. Yet, the standard of proof used should not be "beyond a reasonable doubt" as applied in criminal proceeding, but rather the standard of evidence "preponderance or balance of probability." This matter needs to be clarified further in law and regulations or expressed in court decisions.

#### **6.4 Streamlining the Election Petition Process**

This sub chapter discusses specific issues related to procedural aspects of election dispute settlement. There are two issues will be discussed: (i) finality of judgment and (ii) lapse of time.

##### **6.4.1 Finality of Judgment**

The settlement of electoral disputes should be done on a "fast track" mode, because it is closely related with the filling-up of a public office. However, Wallace's notion should be

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<sup>130</sup> Wasis Susetio, loc.cit.

<sup>131</sup> Id at 393.

<sup>132</sup> Id at 394. According to Maruarar Siahaan, from the provision regarding evidence in *Law No. 24 of 2003* it seems that the evidence law used in the Constitutional Court adopts the 'beyond reasonable doubt' standard as applied in criminal court process. However, he also stated that the truth to look for is not the absolute material truth. Maruarar Siahaan, loc.cit.

emphasized as it states that the importance of a quick action shall not omit a fact that the mechanism and dispute settlement bodies should be fair.<sup>133</sup> On that account, the legal framework of elections should provide provisions concerning corrections over incorrect decisions, in either the form of appeal or other terms.

This issue has become a problem in Indonesia, especially during the 2004 General Elections in which conduct of dispute settlements over general election results came under the purview of the Constitutional Court. According to the 1945 Constitution, the Court shall settle such case at the first instance and as the last resort. This means that there are no further possibilities to alter the decision once the Constitutional Court has made its judgment. It seems that the rule is in favour of a faster trial and certainty of law, by doing so may enable the immediate implementation of the general election results.

Nevertheless, a problem emerged when the document which had been presented before the Court as documentary evidence was proven to be a falsified one in a criminal court at Sorong, Papua. Since the decision of the Constitutional Court is “final,” the seat obtained from the Constitutional Court’s decision could not be altered for the right candidate. This situation is of course not in accordance with the principle of justice.<sup>134</sup>

Another problem concerning finality of a court decision has also recently occurred in the dispute within the local government election in Depok City, West Java (*Depok Case*). In this case, the Bandung High Court then annulled the decree made by the KPU Depok concerning the Depok Regency local election. The decision, which is final and binding (according to *Law No.*

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<sup>133</sup> Wallace, *op.cit.*, 4.

<sup>134</sup> Adhy Aman, “*Tinjauan Kritis atas Sistem Penyelesaian Perselisihan Hasil Pemilu*”, [Critical Review of Election Dispute Settlement System], in *Menjaga Denyut Konstitusi* [Defending the Constitutional Throb], (Eds Refli Harun, Zainal A.M Husein, and Bisariyadi), (Jakarta: Konstitusi Press, 2004) at 158-159. See discussion concerning the case in Topo Santoso, *Kepala Daerah Pilihan Hakim* [Local Government Leader Elected by Judge], (Bandung: Harakatuna, 2005).

32 of 2004) was perceived by many experts and observers as unfair and inaccurate as well as in violation of the principle of law.

In this case, the Election Commission of Depok Regency submitted a review to Supreme Court with a ground that the Bandung High Court had committed a legal application mistake when it attempted to settle the dispute on Depok Regency local election. The mistakes were particularly in violation of section 106 (1) and (2) of *Law No.32 of 2004* and section 94 (1) and (2) *Government Regulation No. 6 of 2005* and section 3 (1) *Supreme Court Regulation No. 2 of 2005*. These provisions can be construed as follows:

- 1) "complaint is of concern towards vote calculation which affects the election of candidates" ;
- 2) " vote calculation means calculation of lawful ballot";
- 3) "The meaning of "lawful ballot" is clearly regulated in section 95 of *Law No. 32 of 2004* and section 82 of *Government Regulation No. 6 of 2005*.

Based on these provisions, if the balloting process which determines the lawfulness of the ballot calculation has not been carried out, then it cannot be claimed that there has already been an established election result as the only subject to be debated in the election petition. The fact that the Bandung High Court had placed a decision on this case based on its assumption that the balloting process had been carried out can be conceived as a clear mistake in this case. The other mistake was that Bandung High Court did not even take into account with proper manner several pieces of evidence submitted by the Election Commission of Depok Regency.

The most important issue in this case is whether the decision of the Bandung High Court was final or not at the time. In its conclusion, the Supreme Court had overruled the decision made by the Bandung High Court despite *Law No. 32 of 2004* clearly stating that the judgment of



the High Court is final. The ruling of Supreme Court at the time was based on the fact that the Bandung High Court had committed legal mistakes concerning the substance of a local election dispute and on court proceedings. The Supreme Court pointed out that there was an injustice with the Bandung High Court's decision which needs to be corrected by the Supreme Court. Justice is more important than legal certainty in this case.

The finality of the decision made by an election court is also a legal issue in Malaysia. In *Yong Teck Lee case*<sup>135</sup> the issue was whether the decision of an election judge could be perceived as a decision of a High Court judge and thus deemed eligible as a subject for appeal. The Court of Appeal held that a decision of an Election Judge is not appealable to a higher court. There is also an interesting argument in the decision stating that "Election Judges are appointed to deal with election cases shortly after elections are held in order for speedy disposal of such case..."<sup>136</sup>

Abdul Aziz Bari commented that such decision was good as it would avoid election results being withheld, which would lead to inconvenience.<sup>137</sup> This is a correct statement in the perspective that election dispute settlements should not disturb the electoral process itself. Therefore, in order to effectively carry out such settlement, legal certainty and proper timeframe are required. However, if the decision of the judge is absolutely incorrect and violates the legal framework, the finality of the judgment will eventually spawn injustice. Considering the good example of the *Depok Case*, it is proposed that, for special circumstances, the decision of an electoral dispute be made subject to appeal to a higher level of authority.

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<sup>135</sup> *Yong Teck Lee v Harris Mohd. Salleh & Anor* [2002] 3 CLJ 422, [2002] 3 MLJ 230.

<sup>136</sup> *Yong Teck Lee v Harris Mohd. Salleh & Anor* [2002] 3 MLJ at p.247.

<sup>137</sup> Abdul Aziz Bari, *op.cit.*, 220.

#### 6.4.2 Lapse of Time

In order to undertake a settlement process, petitions concerning general election results must be submitted within three days from the national announcement of the general election results by KPU.<sup>138</sup> This time limit is mandatory and should be complied with; otherwise the petition will be dropped or dismissed by the court (*niet ontvankelijk verklaard*).<sup>139</sup>

In the 2004 Elections, the Indonesian Constitutional Court had applied this particular rule in a very strict manner. An example of this can be seen in the case of an election petition submitted by *Partai Persatuan Demokrasi Kebangsaan* (United Democratic Nationhood Party/PPDK).<sup>140</sup> In this case the Constitutional Court rejected the petition brought by the respective political party because it was sent five minutes late from the required time limit (3x24 hours<sup>141</sup> from the exact time of national announcement by the KPU).

According to the Court, the proclamation of the general election result was nationally announced on Wednesday, May 5, 2004 at 13.55 PM and the petitioner had sent their petition document initially by facsimile on Saturday, May 8, 2004 at 14.02 PM (the real document had been sent on Tuesday, May 11, 2004). Therefore, according to the Court, the petitioner had failed to fulfil the time limit requirement (three days) as prescribed by the election law. Hence, the Court dismissed the case (*niet ontvankelijk verklaard*).<sup>142</sup>

<sup>138</sup> Section 74 (3) Law No. 24 of the Year 2003 and Section 5 (1) MK Regulation No. 04/PMK/2004.

<sup>139</sup> Section 10 (4) MK Regulation No. 04/PMK/2004. See also *Buku Pedoman Beracara dan Proses Administrasi Perselisihan Hasil Pemilihan Umum di Mahkamah Konstitusi*, [Guidance Book Regarding Procedure of General Elections Settlement in Constitutional Court]. 2004, at 51.

<sup>140</sup> Case No. 052/PHPU.C-II/2004.

<sup>141</sup> Three days.

<sup>142</sup> *Mahkamah Konstitusi* [Constitutional Court], *Berita Mahkamah Konstitusi* [Constitutional Court News], *Edisi Khusus Penyelesaian Perselisihan Hasil Pemilu 2004* [Special Edition Settlement of 2004 General Election Dispute], No. 5, June-July, 2004, at 14.

A similar issue to that of above can be found in the *Partai Persatuan Pembangunan* (Unity and Development Party) case.<sup>143</sup> The question of this case was whether fulfilling the time limit for submitting an election petition is mandatory. The Constitutional Court stated that the petition made for Aceh Tenggara (Southeast Aceh) election district had been submitted beyond the time limit on Saturday, May 8, 2004 at 13.45 PM. Consequently the Court decided that the election petition raised for this particular district was not accordance to section 74 (3) *Law No. 24 of 2003* and was then dismissed.

Similar decision can be seen in *Partai Bintang Reformasi case*.<sup>144</sup> In this case the legal issue is whether the revision of evidence to the Supreme Court should be submitted within the exact period as provided by the court (three days). At the judgment, the Constitutional Court decided that since the submission of new evidence by the petitioner was on May 21, 2004 had already exceeded the given time limit (three days), the Court held that that evidence in Election District I of Deli Serdang cannot be accepted in the proceeding. Based on section 7 (3) *Constitutional Court Regulation No. 04/PMK/2004* the evidence cannot be accepted and the petitioner had failed to present the petition. The petition was then dismissed.

Hence, it is submitted that there should be a balance between two principles: the quickened process and fairness of decision. This can be done if the entire process is given a time constraint and provided with a mechanism to correct unjust decision. The authority given to selected judicial bodies to settle election disputes in the first and final level must be accompanied by a screening system through which petitions must pass, in order to be eligible to be heard by the relevant body. This screening system will function as a means to select eligible petitions which are based on strong grounds and in possession of sufficient evidence, before they are

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<sup>143</sup> Case No 016/PHPU.C1-II/2004.

<sup>144</sup> Case No. 028/PHPU.C1-II/2004.

received and settled by the Supreme or Constitutional Court. Such method will aid the creation of a more efficient and effective conduct of Indonesia's election dispute settlement system.

The problem of time limitation has also become an important issue in the election petition settlement process in the Philippines, as could be seen in the case of *Edilwasif T. Baddiri v Comelec*.<sup>145</sup> The petition presented in this case was for *certiorari* with prayer for the issuance of a temporary restraining order and writ of preliminary injunction to nullify the questioned Resolutions promulgated on July 8, 2004 and October 1, 2004 by the Commission on Elections (Comelec), First Division, and Comelec *en banc*, respectively.

The Comelec affirmed the ruling of the Provincial Board of Canvassers of the Province of Sulu, which granted the petition for correction of manifest error filed by respondent Loong, resulting in the exclusion of petitioner from the list of the four winning candidates for Board Member, Sangguniang Panlalawigan, and First District of the Province of Sulu. On May 17, 2004, Loong filed a Petition for Correction of Manifest Error with the Provincial Board of Canvassers of Sulu. On May 18, 2004, Baddiri filed an Opposition. On May 19, 2004, the Provincial Board of Canvassers of Sulu granted the Petition for Correction of Manifest Error in its Ruling.

Section 7, Rule 27 of the Comelec Rules of Procedure clearly states that the petition for correction may be filed at any time before the proclamation of a winner.<sup>146</sup> Respondent Loong filed the petition for correction during the proceedings of the Provincial Board of Canvassers; hence, it was filed before the proclamation of the winning candidates. The petition was, therefore, filed on time.

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<sup>145</sup> <http://www.supremecourt.gov.ph/jurisprudence/2005/jun2005/165677.htm>

<sup>146</sup> *Bince, Jr. v Commission on Elections*, G.R. Nos. 111624-25, March 9, 1995, 242 SCRA 273, 285.

The issue of time in submitting a complaint or in fulfilling such requirements was also raised in the case of *Esteban M. Zamoras v Commission on Elections (First Division) and Bartolome Bastata*.<sup>147</sup> Section 3, Rule 22 of the 1993 Comelec Rules of Procedure specifically mandates that in appeals from decisions of courts in election protest cases, the notice of appeal must be filed within five (5) days after the promulgation of the decision.<sup>148</sup> Zamoras filed his notice of appeal on December 2 2002, which is within the 5-day reglementary period. However, Zamoras paid only P600 as appeal fee, which was short by P2, 600.<sup>149</sup>

A case will not be deemed as duly registered and docketed until full payment of the filing fee. Otherwise stated, the date of the payment of the filing fee is deemed as the *actual* date of the filing of the notice of appeal. Therefore, the subsequent full payment of the filing fee on January 28, 2003 did not cure the jurisdictional defect, because that date of payment was deemed as the *actual* date of filing the appeal, which was almost two (2) months (past the 5-day reglementary period rule) after Zamoras received the MTCC Decision on 29 November 2002.

The conditions explained above certainly means that Zamoras's actual filing date was deemed as to be way beyond the 5-day reglementary period to file an appeal. Consequently, Zamoras was not only chargeable with the incomplete payment of the appeal fees but he also

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<sup>147</sup> Zamoras and private respondent Bartolome Bastata ("Bastasa") were candidates for *Punong barangay* of *Barangay Galas*, Dipolog City in the elections held on July 25, 2002.

<http://www.supremecourt.gov.ph/jurisprudence/2004/nov2004/158610.htm>

<sup>148</sup> This section states: Within five (5) days after promulgation of the decision of the court, the aggrieved party may file with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party. Otherwise, the appeal is dismissible under Section 9 of the same rule which reads: The appeal may be dismissed upon motion of either party or at the instance of the Commission on any of the following grounds, two of those are: (a) Failure of the appellant to pay the correct appeal fee; (d) Failure to file notice of appeal within the prescribed period.

<sup>149</sup> Sections 3 and 4, Rule 40 of the 1993 *Comelec Rules of Procedure* provide: Section 3. *Appeal Fees.* - The appellant in election cases shall pay an appeal fee as follows: (b) Election cases appealed from courts of limited jurisdiction... P500. In every case, a legal research fee of P20 shall be paid by the appellant in accordance with Section 4, Republic Act No. 3870, as amended. Section 4. *Where and When to pay.* - The fees prescribed in Sections 1, 2 and 3 hereof shall be paid to, and deposited with, the Cash Division of the Commission within a period to file the notice of appeal.

failed to remit the required filing fees for his motion for reconsideration. The payment of the filing fee is a jurisdictional requirement for a petition submittal and non-compliance is a valid basis for the dismissal of the case. The subsequent full payment of an appeal's filing fee after the lapse of the reglementary period will not cure the jurisdictional defect caused by the lapse. An issue of procedural lapse like that of Zamoras's clearly warrants the outright dismissal of his appeal.

These decisions are fair and accurate, since election proceedings are conducted in a "fast track" basis, and therefore the time limit prescribed in the proceeding should be adhered. If the Court decides to tolerate or create an exception over a lapse committed by a certain party, then eventually other parties will most likely demand the same treatment, or even greater. In such situation, the given time limit regulation will not be effective. This in turn will cause a delay in the Court's decision making process. Considering this, for their common benefit in the future, all parties must take into account the importance of every formal requirement needed to send a petition, including the time limit.

It is submitted that with these several court decisions concerning the adherence towards time limit requirement on election petition process, the election process is done on a fast track basis and therefore should not be disturbed by a lengthy or delayed election petition process. However, the court should also take the public interest factor into account, because an election petition reflects not only the interests of the candidate but also the public. Considering this, it will not be a mistake to harmonise the time limit element or other technical provisions with demands over emergency situations. This kind of harmonisation issue can be seen in *Ocate v Comelec* case.<sup>150</sup>

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<sup>150</sup> [G.R. No. 160865, March 9, 2004].

In this case, Petitioner Celso L. Ocate and private respondent Angelito M. Lopez competed for the position of *Barangay* Chairman of Barangay 308, Quiapo, District II of Manila, during the July 15, 2002 election. The petitioner was proclaimed as the duly elected *Barangay* Chairman. On July 26, 2002 the private respondent filed a petition alleging that fraud and irregularities had marred the conduct of the elections.

The petitioner alleged that the election protest was filed out of time (the last day was on July 25, 2002). However, the private respondent maintained that the election protest was timely filed on July 26, 2002. When he went to file the election protest in the afternoon of July 25, 2002 (the last day) there was no officer of the court to receive and docket the pleading. It appeared that on that day, the Court Administrator ordered the suspension of work due to heavy rains caused by typhoon "Kaka". Consequently, the private respondent was constrained to file the election protest in the morning of the following day, July 26, 2002.

The legal issue in this case is whether or not Comelec committed grave abuse of discretion amounting to lack or in excess of jurisdiction in ruling that the election protest of private respondent was filed on time. The court is convinced that respondent Comelec did not commit any grave abuse of discretion in ruling that the private respondent's election protest was filed within the reglementary period.

Section 252 of the *Omnibus Election Code* provides in part that "(a) sworn petition contesting the election of a *barangay* officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election."

It is well settled that technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In this case, it cannot be gainsaid that the private respondent's one day delay in filing the election protest was due to his fault.

It is submitted that the above decision based on three arguments. First, the mistake was not laid on the private respondent because the petition submission delay was due to the court office being closed on that day due to the storm "Kaka." Second, in the election protest the object to be protected is not only the candidate's interest, but also public interest, primarily the electorate. The law should ensure that public interest will not suffer due to technicality problems. Third, the decision was not in violation of the principle that the election protest/ election petition was to be conducted on a fast track manner.

The above-mentioned provision concerning time limit in election petition settlement are in accordance with international standard which provide that:

"The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. Prompt resolution can frequently prevent escalation of a minor complaint into a major problem."<sup>151</sup>

As Phil Green and Louise Olivier pointed out, it is important to provide time limit for settlement. The long process can destabilize a sensitive political environment and lead to civil unrest. It is also essential that election challenges do not unreasonably delay the election

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<sup>151</sup> IDEA (2002) op.cit., 93-94.



process.<sup>152</sup> Delays in the formation of parliaments and governments may lead to civil or political unrest, or exacerbate such if it already exists.<sup>153</sup>

### 6.5 Protection of Two Interests: Public and Aggrieved Party

This part will discuss the relation between settlement of election offence through election petition process and settlement through criminal process. In *James S. Miguel v Comelec, et.al*<sup>154</sup> the judge stated that an election protest involves public interest. Therefore it should be concluded as quickly as possible to the end that any doubt as to the true expression of the will of the electorate may be dissipated without delay and that the public faith, confidence and cooperation, so essential to the processes of government, may not be undermined.

Based on the description above, we may conclude that both of the settlements mentioned above should consider and guarantee two interests, i.e., to guarantee the presence of general election process which is free from fraud to fulfil the basic rights of the voters who will elect the representatives in a fair manner and, second, to guarantee the protection of the aggrieved party's demands (candidate/party) to cancel general election result which according to them, has been falsely/incorrectly committed. Therefore, both the settlement through the criminal process and through election petition should be able to fulfil the interests mentioned above.

This can be conducted if there is any reasonable, appropriate, and proportional consequence from those two types of settlement. Apparently, settling an election offense case through a criminal proceeding could result both in the implication of a criminal sanction to the perpetrator (and/or his accomplices) and the cancellation of his/her candidacy. Meanwhile, the

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<sup>152</sup> Phil Green, Louise Olivier, "Challenging Results (Mechanisms for Challenging Results)" August 10, 2007.

<http://aceproject.org/ace-en/topics/vc>

<sup>153</sup> Ibid.

<sup>154</sup> [G.R. No. 136966, June 8, 1999] *En banc*

same consequences (criminal sanction and cancellation of candidacy) can also be given to a party if it is proven to have caused such offense, particularly if the offense happens to be an official policy of that party.

Another consequence which may arise in the advent of a proven offense is the cancellation of the general election result. These rules apply to countries with an electoral system where there may be multi candidates in a constituency, such as Indonesia. In light of such event, not only a criminal sanction and a candidacy cancellation would occur, but also a cancellation of the general election results. Furthermore, this also means that the guilty candidates cannot be replaced by any other, and the party which is listed on the following numerical order will acquire the seat.

Subsequently, the settlement of an election petition must also guarantee two kinds of protection: protection to the parties'/candidates' rights to submit a petition, and protection to the voter's right to submit their petition of complaint, with or without the parallel consent of the parties/candidates whom they opted for.

The latter is meant to complement the rights of the petitioning candidate/party to submit their petition with an assurance to the voters to relief them from the sense of being aggrieved upon the election result. Such action is necessary since the policies of losing candidates/parties not to submit their petition might not be parallel to the will of the voters themselves, who demand justice over the general election result which they think is unfair.

By not giving the voters their right to submit petitions, their basic rights are disregarded. Certainly, the court will most likely be inundated if such opportunity is given freely to the public. Therefore, a mechanism similar to a "class action" is needed, in which a number of people are given the opportunity to represent the interest of the voters in a constituency. This mechanism

may also imply that cases which are brought upon the court by these representatives may only be examined once, and that there will not be any other case of the same matter to be given to the court.

The provision which states that only political party can submit petition (while candidate cannot do so) as can be observed in *Law No. 12 of 2003* and *Law No. 24 of 2003* should be amended. In this case, the right to submit an election petition must also be given at the candidate level, and not only among political parties. This is to ensure that if an impairment of one candidate by another from his/her own party should occur; that person is entitled with a right to seek justice.

Besides that, the mechanism created for the settlement of election petition should not undermine the above-mentioned two interests, for example, the requirement of quite a large amount of deposit money will make the voters, candidates or political parties renounce their intention to submit a petition. If this occurs, it will be an apparent fact that truth, democracy, and the people's voices will be eliminated due to the incorrect decision made regarding the general election result. Thus this will decrease the enthusiasm to correct false general election results.

The stipulations regarding election petition in Indonesia, which enumerate its easiness and affordability (without the obligation to pay deposit), will encourage the submission of election petition and provide a better opportunity for the court to examine whether the general election result is correct. Therefore, the right of the justice seekers to protect the voice of the people can be more assured and respected.

The consideration to answer such challenges should be sought (once again) in the two protected interests mentioned above. Therefore, it is not only for the interest of the swift judiciary. By considering the possibilities of error in the decision making by the judges,

decisions made over election petition should be able to be appealed to the higher court of justice or should be able to be corrected by the same court of justice. Therefore, the legal framework should provide a mechanism to correct a wrong decision.

Since the matters which need to be assured include public interest, which is manifested in the form of the basic rights of the voters, and the interest of the candidate who feels impaired in his/her right, then wrong decisions should be able to be corrected. Otherwise, the existing legal framework will bury the votes of the people and democracy. This matter is important to be noted, especially in the Indonesia's experience in settling election petition cases, in which the decision of the court (Constitutional Court) is the first and final decision.<sup>155</sup>

Since the swift undertakings of a general election is of great importance for the sake of effective conduct over critical government agendas (such as the working period of parliament), it is then natural that demands from various parties to hasten the election's additional processes such as election petition settlements. In light of such demands, there is a need to inquire which must be prioritised between these two goals: safeguarding the democratic value and the rights of the people, or ensuring the smooth undertakings of other national agendas.

Certainly, these are not easy options to pick, since both demands protection and therefore the only remaining choice is to protect them both. There are two options by which this can be done: First, by giving an opportunity for appeal (to correct the error in the first instance decision) yet coupled with an appropriate time limit. The appeal process itself should be dedicated only to examine whether the judiciary has appropriately enforced the relevant law, having done so it shall not examine the facts again.

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<sup>155</sup> Article 24 C (1) of the 1945 Constitution states that the Constitutional Court is authorised to trial at the first and final degree and whose decision is final on the dispute regarding the General Election result. This provision is also contained in section 10 (1) of *Law Number 24 of 2003* regarding the Constitutional Court.

The second choice may take place if the court decides that the results must be executed (meaning that no appeal opportunities are given). If an error is disclosed within the process (for example the previously submitted evidence is false) and matters regarding such has been proven in the court, then the first decision will become null and void or annulled by the court conducting the first examination.

The other important aspect is the ground of election petition. This should at least derive from either these conditions: (i) the presence of votes miscounting/miscalculation committed by the general election commission; (ii) the presence of certain election offences; and (iii) the elected candidate is deemed unqualified as a candidate. If a discovered miscalculation is proven to have no particular effect towards the general election result, then it cannot be used as a ground for petition. Allegations over the commission of an election offense can only be directed to the winning candidate, the electoral management bodies, or other parties, to the extent that such offense affects the general election result.

An example of the second ground mentioned above may include: the intentional/negligent registration of voters in a significant number which may/in order to affect the general election result, briberies or intimidations committed to a significant number of voters in order to persuade/coerce them to elect a certain party/candidate, or, ensuring multiple voting to be done by a significant number voters by consent/coercion of a certain party/candidate or its agents.

Meanwhile, the third ground of election petition implies the need for the petitioner to present several requirements in order to prove the defective candidacy qualification of the alleged candidate. These include, for example: age; education; criminal backgrounds and

sanctions relating to them, if any, etc. If any unfulfilled qualification of such is revealed after the election, the other parties may submit this matter as a ground for petitioning.

If the legal framework stipulates that the only ground for petition is vote miscalculation committed by electoral management body (as stipulated in the legal framework of general elections in Indonesia) then the punishment for the perpetrators shall become insignificant in its contextual meaning of guaranteeing a more democratic general election result.

This statement can be illustrated as follows. If it is possible that a party/candidate has committed many frauds while no evidence is found concerning miscalculations committed by the election commission, then the petition shall be considered weak. In this situation, it is also possible to have the alleged candidate/party processed through a criminal proceeding. However, such action may consume more time.

The last important aspect deals with the role of the judge in handling election petitions. Despite the fact that election dispute settlement is closer to a civil procedure, the judges should not act passively. If their decisions are only based on the inquiries and answers made between the involved parties, while the submitted evidence cannot be assured of their correctness, it is likely that the finality of their decision shall be detrimental to the rights of the people as voters, despite such decision's conformity to the civil procedure law.

Therefore, judges should be more active in examining whether the submitted evidence is correct or not. In this context, it is very important to seek the factual truth within the practice conducted by the Indonesian Constitutional Court in the settlement of the 2004 General Election disputes (in the framework of assuring two interests, i.e., the right of the people and the right of the candidates which were impaired by the presence of a false decision).

## CHAPTER 7

### CONCLUSION AND RECOMMENDATION

Related to the purpose, this thesis is intended to demonstrate that general election process in four countries, particularly Indonesia, in general is in line with international standards on election. However there is a need to make reform in the criminal process and in the election petition process for a better democratic system of government. Such a pure democratic country is in the spirit of *Pancasila* and the 1945 Constitution. Given the foregoing discussion and analysis regarding settlement of election offences in Indonesia, Malaysia, Singapore and the Philippines, the following conclusions and recommendations are noteworthy. The conclusions and recommendations in this chapter are in particular concerned with reforming the Indonesian system of election offences settlement, although they are of a general application. The recommendations are like the bearings of a compass charting the way forward for a more democratic Indonesia, and will also be instructive for the other countries covered in this study.

#### 7.1 Conclusion

##### 1. International Standards on Elections

In accordance with international standards, the legal framework must stipulate a number of provisions in order to ensure democratic elections. The standards are set on international benchmarks, which can be applied to measure or analyse a legal framework for democratic election. There are fifteen electoral standards which are internationally acknowledged covering the following areas: (1) structuring the legal framework, (2) electoral system, (3) boundary delimitation, districting or defining boundaries of electoral units, (4) right to vote and to be

elected, (5) electoral management bodies, (6) voter registration and voter registers, (7) ballot access for political parties and candidates, (8) democratic electoral campaigns, (9) media access and freedom of expression, (10) campaigns finance and expenditure, (11) balloting, (12) votes counting and tabulating, (13) role of the representatives of the parties and candidates, (14) electoral observers, and (15) compliance and enforcement of electoral law.

## **2. International Standards on Settlement of Election Offence**

According to international standards, the legal framework on elections should provide effective mechanism and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for specific electoral offences. The legal framework for elections must set forth detailed and sufficient provisions protecting suffrage rights and should provide the right to lodge a complaint with the competent electoral management bodies (EMB) or court when an infringement of electoral rights is alleged to have occurred. The law must require a prompt decision to avoid an aggrieved party losing his/her electoral right, provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency.

According to international standard, the right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the power of the independent judicial body charged with such review. The effect of irregularities on the outcome of elections must be established by law.



### **3. Legal Framework of Elections in General**

In order to conduct general elections, every nation should have the legal framework for implementing such process. In this regard, Indonesia, Malaysia, Singapore and the Philippines are no exceptions. They have laws and regulations as legal basis for their elections. They develop legal framework for election system and process in their respective countries. Democratic general election requires legal standards, which conforms to the international standards regarding election as set out in various international documents.

The legal framework in these selected countries have provided the fundamental suffrage rights, such as the right to vote and register as a voter, the right to run for public office, etc. The fact that certain countries have several laws, while another has an election code (such as the Philippines) does not become a serious problem. The International Electoral Standards maintain that a country may adopt separate laws containing provisions specific to individual elected institutions or may include the entire election legislation in one law. Codification approach as applied in the Philippines probably has more advantages. It encourages consistency in election administration and practices. This approach will promote unified implementation of the law in connection with all elections.

The existing legal frameworks in the four analysed countries, i.e., Indonesia, Malaysia, Singapore, and the Philippines, in general are relatively conformed to the standards and enabling the convening of democratic elections. However, such legal frameworks still contain a number of problems, such as: (1) no independent election commission in Singapore, (2) no independent body to determine or assist the determination of boundary delimitation in Singapore, Indonesia, Malaysia and the Philippines, (3) not all member of parliaments are elected directly through elections in Singapore, and (4) legal background requirement for electoral management bodies is

not provided, except in the Philippines. To address such weaknesses, improvements need to be done in order to achieve a better quality of elections.

The important thing to be emphasised is that the legal framework must not exclusively benefit a certain party, including the governing party. The important things to be emphasised in the legal framework are the presence of protection over election process against various frauds, violations, or offences. Therefore, for each legal framework, a sanction for a number of violations, a determination of types of violations which are capable of annulling the election result and a determination of rules to process the violations both criminally and through general election petition have to be provided.

#### **4. Scope of Election Offences**

Indonesia, Malaysia, Singapore, and the Philippines already have criminal provisions to be used to protect the integrity of the elections process, which are regularly held in those countries. Referring to the United Nations' Human Rights Standards Regarding Elections, the national electoral law must protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practices. The substance of the above-mentioned offences has been covered in the elections law (and the election offences law) in Indonesia, Malaysia, Singapore, and the Philippines.

However, the number, the types and the scope of the election offences in these four countries different from one another. The legal frameworks in these four countries have attempted to ensure the fairness of elections, which required a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Many

fraudulent aspects in the election which are prohibited and punishable by criminal sanctions in other countries are not prohibited in Indonesia. Observed from the quantity point of view, election offences in Indonesia are not sufficiently addressed. The shortages of arrangement of election offences are misused by various parties. This mistreatment is also not covered by the rules of the general election laws.

Based on the above description, the weaknesses of scope and division of election offences, particularly in Indonesia are as follows: (1) many improper conduct during an election process are not yet covered by law and are only left to political ethics that apparently also are not complied with; (2) the definition and scope of bribery is very narrow. Therefore, many briberies in the election are conducted explicitly and difficult to be apprehended by the existing provisions; (3) the classification of election offences into different articles is not explicit enough on whether it is based on the stages of general elections or based on the type of election offences or based on the subject of offences; (4) the subject of election offences is only individual, while the political party cannot be the subject of offences, whereas such offences could probably occur due to the policies of such a political party.

##### **5. Bribery as a Corrupt Practice**

Among various actions threatening the integrity of election, bribery is the one that needs specific attention. In Southeast Asia, this crime remains a serious threat, including in the political field. In Indonesia, there is only one election offence that can be classified as bribery. The arrangement of bribery in Indonesia is very brief compared to the arrangement in Malaysia, Singapore, and the Philippines. Compared to other countries, the arrangement of bribery in the general elections in Indonesia is not sufficient. While in Malaysia, it is stipulated in nine

offences, in Singapore 10 offences, and in the Philippines three offences. Although there are only three bribery offences in the Philippines, their formulations are broad enough and cover many bribery actions in the election.

With respect to election in Indonesia, there is a weakness in arrangement of bribery in Indonesian election law. The giving of money, goods, and other materials for various reasons (donation for school, transportation allowances for campaigning, gifts, door prize, etc.) without explicitly enticement to vote is not punishable. The behaviour of the apparatus, although not explicitly supporting such action, is advantageous for one of the parties and makes it difficult to be punished. The involvement of many government employees and heads of villages in the campaign as invitees is difficult to be used as the ground to punish the inviting party due to the reason that they are present voluntarily.

## **6. Settlement of Election Offences**

Based on provisions in the legal frameworks and decisions of election court or election judge, it is clear that settlement of election offences can be conducted by means of two different ways: first, its criminal aspect is settled through criminal process; second, its electoral aspect is settled through election petition. These two different ways of settlement have consequences. In the first process, it begins with the presence of a complaint/ report regarding the occurrence of election offences (or the findings of election offences by law enforcers), while the second process is started by the lodging of an election petition by aggrieved parties in the election process.

## 7. Settlement of Election Offences through Criminal Process

Settlement of election offences in the criminal process generally refers to the criminal procedure code in each country, especially in Malaysia and Singapore. In the Philippines, the procedure for handling election offences is stipulated in the election law code. Meanwhile in Indonesia the procedure for election offences are provided by the Criminal Procedure Code and the General Election Law. However the General Election Law creates special rules that are different from the provisions in the *Criminal Procedure Code*.

Settlement of election offences in Indonesian General Election Law contains several exceptions not found in the *Criminal Procedural Code*. These exceptions are shorter investigation, prosecution and examination in the court. Settlement of election offences in Malaysia and Singapore uses the *Criminal Procedural Code*, and they have no exceptions as the one in Indonesia. The court for the criminal proceeding are the Sessions Court in Malaysia and the District Court in Singapore. In the Philippines, the settlement also refers to the process of the general criminal procedural laws. However, Comelec has the authority both in investigating and prosecuting election offences.

According to international standards, the effect of irregularities on the outcome of election must be established by law. If election offences are settled through criminal justice system, there must be a nexus between the election offences and avoidance of election result or disqualification of a candidate as follows: (1) the conviction of election offences will bring criminal sanction and cancellation of election result; or (2) the conviction of election offences will bring criminal sanction and candidate's disqualification but the general election result is not affected. In situation (2) there will be a substitution of the candidate found guilty with a new candidate from the same party. This is especially in a general election system with multiple

candidates for every constituency. A common weakness in the Indonesian general election legal framework, that is, election offences do not result in the cancellation of general election result, as they only cause the cancellation of the candidates who are found guilty of election offences and only explicitly stated for one election offence which is bribery.

### **8. Settlement through Election Petition**

Indonesia does not recognise the existence of an election court or election judge, in its Constitution. It is affirmed that the settlement of the disputes over the general election result is with the Constitutional Court. Contrary to that, both in Malaysia and Singapore, the existence of Election Court/Election Judge authorised to handle and settle election petition is recognised. In the Philippines, for all contests relating to the election, returns, and qualifications of Members of the Senate and the House of Representatives, the Senate or the House of Representatives, the Electoral Tribunal is the sole judge. For other contests, there are three kinds of settlements: (1) Election contests for *Batasang Pambansa* regional, provincial and city offices, (2) Election contests for municipal offices, and (3) Election contest for *barangay* offices.

Election offences in Malaysia, Singapore and the Philippines are ground of election petition. In Indonesia they are not ground for election petition. The sole ground is only the occurrence of miscalculation by the Election Commission. Different from other countries that clearly stipulated several offences as the ground for submitting election petition; this matter is not clearly stipulated in Indonesian law.

## **9. Proof in Criminal Process and in Election Petition**

In Indonesia, burden of proof in the general election offences cases lies in the hand of the Public Prosecutor and its standard of proof is beyond a reasonable doubt. Meanwhile, for election petitions which are heard by the Constitutional Court, the burden of proof lies in the hand of the petitioner. However the defendant must also present evidence to contest it. From the available decisions of the Constitutional Court there is no statement of law which has clarified the issue of the standard of proof. It is unclear whether the standard is beyond a reasonable doubt or balance of probabilities. However as the Constitutional Court does not hear election offences but only election petition, it is submitted that the standard should be the balance of probabilities.

In Malaysia, the proof of election offences conducted through the criminal proceeding becomes the burden of the Public Prosecutor with beyond a reasonable doubt as the standard of proof. Meanwhile, for the settlement through election petition, the burden lies with the petitioner with balance of probabilities as the standard of proof. In the Philippines, the proof for election offences becomes the burden of the Public Prosecutor where the Commission on Election of the Philippines, in this matter, can also be the prosecutor with the burden of proof as other offences. Meanwhile, for the settlement through election contest, the burden of proof lies on the petitioner. However, the court is actively searching for the truth and conducting verification.

Overall to prevent the politicisation of an election process, every country needs a legal framework that protects elections from all kinds of election offences, provide the right of all aggrieved parties to challenge the elections results 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 complaint mechanism. The existing legal frameworks of the respective countries generally comply with international

standards on elections. However there are differences on some issues, especially on 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 both on the criminal process and on election petition. Particularly on the Indonesian settlement of election offences system, there are some aspects of the legal framework of general elections that should be improved. Some major flaws still existing can be corrected by referring to the recommendations laid out in the next section.

## **7.2 Recommendation**

Based on some points provided in the conclusion, the last part of this study will present recommendations that are important to improve the settlement of election offences system for the future, especially in Indonesia. This will result in a better democratic system for Indonesia in particular, and for the other ASEAN countries generally.

The recommendations can be grouped under the following headings (i) purpose of regulating election offences, (ii) protecting for individual and public, (iii) subject of election offences, (iv) protection at every stage of election, (v) arrangement of election offences, (vi) criminalization is needed, (vii) election offences and avoidance of election result, (viii) election offences as the ground of election petition, (ix) right of a candidate in election petition, (x) settlement of election offences, (xi) protection of individual and public interest, (xii) settlement mechanism, and (xiii) role of the judge.



## **1. Purpose of Regulating Election Offences**

Provisions regarding election offences are directly related to the purpose of the election. Provision regarding election offences must relate to the doctrines or principles of election, i.e., free and fair and should prohibit various actions, which can endanger the purpose and principles of the election. The purpose of creating election offences should not only be directed to protect the interest of the election participants (parties or candidates) - since they have the right to protect their rights through election petition, but also the interest of all voters who do not have a right to submit an election petition, even though their right might be affected or harmed. Provisions regarding election offences, should be addressed more to protect the election process from various violations, in order to make the elections run in a free and fair manner. Therefore, the basic right of the people, especially the right to take part in government, to vote and to be elected, also the right to equal access to public service, can have greater protection. By this protection, it is expected that the elected representatives or leaders are indeed truly representing the aspiration of the voters. If the outcome of elections is highly affected by the occurring of violations, then, the person desired by the voters could be eliminated and the voters during a certain period will be represented or led by other person who might not represent their aspirations.

## **2. Protection for Individual and Public**

Various actions, which are considered as threats towards the election, either directly or indirectly affecting the result of the election, must remain prohibited and threatened with sanction in order to prevent them from occurring. For the aggrieved party or candidate, in addition to protection by the provision regarding election offences above-mentioned, there is also

other protection through election petition, which is not always based on the occurrence of election offences. This matter needs to be affirmed, considering the presence of impression that election petition by a candidate through an election court is more important compared to the settlement of election offences.

### **3. Subject of Election Offences**

Subject of election offences should cover all parties who can conduct any action, which threatens the election process. Therefore, the subject of election offences should cover community members, voters, candidates, political parties, election organisers, employers, government officials, security staffs, legal enforcers, and foreign citizens. Concerning the broad scope of the subject of election offences, the stipulation in the Philippines' election law can be used as reference since all parties can commit violations, which have been designated as the subject of election offences. Regarding this issue, obviously, the Indonesian election criminal provision must broaden the scope of its subject of election offences. As such it will be able to solve the general election legal enforcement problems.

### **4. Protection at Every Stage of Election**

Provisions regarding election offences should adequately protect each stage of the election. In each stage, violations may occur against people's basic right, both directly and indirectly affecting the election result. Since all stages are very crucial for an election process, the provisions regarding election offences must not only focus on a certain stage (for example, campaigning stage). Frauds in the registration of voters in which many supporters of parties or candidates are deliberately or negligently not registered can, both directly and indirectly, affect

the final result of a general election. The same also applies to the manipulation of votes counting. Regarding this matter, the provisions in the Philippines' election law can be commended for its scope, which broadly and adequately protects each stage from various violations.

#### **5. Arrangement of Election Offences**

Regarding the regulations to settle election offences, it will be better if actions categorised as election offences are stipulated in only one single statute, either in the Election Act or in the Election Offences Act. This is because the same substance of offences do not need to be repeatedly stipulated in various regulations. This will enable law enforcers and the related parties to apply the provisions accurately.

#### **6. Criminalisation is Needed**

Criminalisation of some serious actions that are harmful for the process of general election should be conducted. Such actions relate to the subject of general election participants, general election officers, and law enforcers and government officers. It includes not only the candidates, but also the political parties. There are still many election offences categorised as corrupt practices and illegal practices that are yet to be prohibited.

The general election law needs to broaden the definition and scope of bribery. Therefore, many bribery actions in an election can be contained with the legal provisions. It also needs to be included in these prohibitions, any bribery before and after the voting day, the form of bribery threatening free and fair election. Provision concerning treating should also be added on the list of election offences because it is still frequently practised and cannot be prosecuted.

## **7. Election Offences and Avoidance of Election Result**

The law needs to emphasise the relation between conviction of a certain offence and the cancellation of an election result. A legal formula affirming that if election offences are proven, the candidate involved in such case shall be disqualified is needed. In addition to that, from the substance of the decision it should be seen whether the offences that have just occurred affected the result of election for a particular party. If the answer is positive, then the result of election shall be avoided. This is of course more appropriate to be processed through election petition settlement, rather than a criminal proceeding. Hence, election offences, especially those that greatly affect the result of an election, should be a ground for an election petition.

## **8. Election Offences as the Ground of Election Petition**

The basis of petition in the settlement of election petition should at least derive from: (1) the presence of miscalculation by the election commission; (2) the presence of certain election offences; and (3) the elected candidate does not have the qualification as a candidate. The first ground is limited to the presence of miscalculation which affects the general election result. When a mistake occurs but does not affect the general election result, it cannot be a ground for a petition. Regarding the second ground, election offences can only be committed by the winning candidate, the general election organiser, or other parties, to the extent that it can affect the general election result. Regarding the third ground, the elected candidate does not have the qualification as a legitimate candidate. Generally to be a candidate, several requirements (age, education, or never been sentenced for certain crimes) are required. If after the election, an inadequate qualification is revealed, then the other party may submit this matter as the ground for petition. If the legal framework stipulates that the ground for petition is only the occurrence of

miscalculation by the General Election Commission (as stipulated in *Law No. 12 of 2003*) then the punishment for the violators become insignificant in the context to guarantee a more democratic general election result.

#### **9. Right of a Candidate in Election Petition**

The law needs to provide opportunity to a candidate in a particular political party to submit an election petition. This is imperative because the election result being contested could aggravate a candidate and advantage other candidates in the same political party. The law should not only address political party's interest, but also its candidates.

#### **10. Settlement of Election Offences**

The settlement of electoral dispute should be on a "fast track" because it is closely related to the filling-up of public office. However, the importance of a quick action should not omit the fact that the mechanism and dispute settlement bodies should be fair. On that account, the legal framework of election should provide provisions to make a correction of incorrect decision, either in the form of appeal or other terms. There should be a balance between the two principles of speedy process and fairness of decision. This can be done if the entire processes are given a time limit and provided with a mechanism to correct unjust decisions. This also can be done if selected judicial body (such as the Constitutional Court or the Supreme Court) is granted with authority to settle the dispute in the first and final level. For the dispute of legislative election (for member of parliament in national level and provincial/ local level), it will be better to set up a screening process, so that only really potential petition with strong ground and evidence will be settled by the Supreme Court or the Constitutional Court.

## 11. Protection of Individual and Public Interest

The settlements through criminal process and election petition should consider and guarantee two interests. First, is to guarantee a general election process which is free from fraud to fulfil the basic right of the voters who will elect the representatives in a fair manner. Second, is the guarantee for the protection of the aggrieved party (candidate/party) to cancel general election result which according them is false/incorrect. Therefore, both settlements should be able to fulfil all the afore-mentioned interests. This can be conducted when there is reasonable, appropriate, and proportional consequence from those types of settlements. Apparently, settlement of election offences through criminal process provides not only a criminal sanction to the perpetrator, but also the cancellation of candidates who are involved, participate, or assisting in the offences.

There are two consequences namely criminal sanction and cancellation as a candidate. If such deviation is an official policy of a political party of which the candidate comes from, the party can also be punished with criminal sanction. In addition, the general election result can be cancelled. Therefore, for a country with a general election system, where there are several candidates in a constituency (such as Indonesia), if there occurred such an event, not only the offender will be punished, but also the general election result will be cancelled. Therefore, the candidate cannot be replaced.

The settlement through election petition must also guarantee two protections. It means, not only the losing candidate/party should be able to submit petition, but also voters being aggrieved, when they consider that the election result is incorrect. It is possible that due to certain reasons, the losing candidate/party does not submit a petition. However, when some of the voters felt aggrieved by the general election result are not given the opportunity to be the

petitioner, the basic right of the people could be undermined. Certainly, freely allowing this process can inundate the courts. Hence, the mechanism similar to a “class action” can also be used, in which a number of people representing the interest of the voters in a constituency and the case against which the general election result is petitioned may only be examined once. Therefore, there will no other cases for the same matter.

The provision which states that only political party can submit petition (while candidate cannot do so) as it exist in the Indonesian general election law, should be amended. It is due to the Indonesian General Election system where the constituency of a candidate from a political party can come from more than one area and the candidates from one political party can compete against one another. If the party is capable of submitting a petition, whereas one of the candidates of the relevant political party felt of being impaired by other candidate from the same party, then the relevant candidate does not have any opportunity to seek justice through an election petition.

## **12. Settlement Mechanism**

The mechanism created for the settlement of election petition should not erode the assurance of the private and public interests, for example, the requirement of quite a large amount of deposit money will make the voters, candidates or political parties to renounce their intention to submit a petition. Moreover, if this takes place, it is an apparent fact that the truth, democracy, and people’s voice which have been eliminated due to the incorrect decision regarding general election result, will not be able to be defended or corrected by law. Therefore, the enthusiasm to correct false general election result will decrease. The stipulation regarding election petition in Indonesia, which has to be easy and for free (without the obligation to pay

deposit), will encourage the submission of election petitions. Thus the court has the opportunity to examine whether the general election result is correct. The rights of a justice seeker to save the voice of the people can be better assured and respected.

Regarding the queries on whether the decision over election offences can be appealed or it is already final; the consideration to answer such queries should be sought once again on the two protected interest above-mentioned. Considering the possibility of error in the decision making by judges, the decision over election petition should be able to be appealed to a higher court of justice or should be able to be re-corrected by the same court of justice. If the first decision is considered final and at a later time it was found to contain an error/ flaw, then the law does not provide a mechanism to correct such mistake. Since the interest of the candidate is being impaired and there is a need to assure the basic right of the voters, then a false decision should be able to be corrected. Otherwise, the existing legal framework has buried the votes of the people and democracy.

### **13. Role of the Judge**

To answer the question on how the election result dispute will be settled, it should also consider the public and individual interest protection. Even though the process of dispute over general election result is closer to civil procedure, the judges should not become passive. The judges should be more active in examining whether the submitted evidence is correct. In cases where there is a lacuna in the law, judges should refer to the law and practice in other relevant countries.



### 7.3 Way Forward

The recommendations as proposed in the sub-chapter above are valuable to reform the legal framework on the settlement of election offences system, particularly in the Indonesian legal system. It is extremely important for a 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, the protection as mentioned in international standards will be very difficult to achieve.

The above recommendations are also both in substance and in formulation consistent with Indonesia's state ideology *Pancasila*, articles 1 (2) and 22E of the 1945 Constitution and the international electoral standards, especially the first and fifteenth standards. In relation to the *Pancasila*, three of the five principles of the *Pancasila* would have been upheld and promoted. The three principles are humanitarianism, unity and integration, and consultative democracy.<sup>1</sup>

By reforming the legal framework of elections as proposed, it is expected that a more democratic election process can be established in the future. By means of such elections, people will accept and fully support the election outcomes, their representatives in national parliament and state assembly, as well as their executive leaders who will in turn truly perform their mandate to protect the interest of the people. In this circumstance, the principle of humanitarianism will be upheld and advanced.

By protecting the interest of the people, the principle of Indonesian unity and integration will be strengthened. The recent political tension of separatism that resulted from social injustice and feeling of discrimination can be mitigated. The people will focus on the process of electing their representative/ leaders and monitoring them, particularly in protecting the interests of the

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<sup>1</sup> The other principles of the *Pancasila* are monotheism (believe in only one God) and social justice.

people. In turn, the representative and the leaders will be more accountable to fulfil the people's aspiration and needs.

True democratic elections will also foster the principle of consultative democracy. In the condition as stated in the recommendations, the will and aspiration of the people will be better reflected in the elected legislature.

With regards to the 1945 Constitution, article 1(2) of the Constitution states that sovereignty is in the hand of the people and implemented in accordance to the Constitution. Meanwhile article 22E of the Constitution states that general elections conducted every five years in accordance to direct, public, free, confidential, fair and just principles. The recommendations submitted in this study will strengthen and promote these constitutional provisions. It means that the elections will be regarded both as procedurally and substantively democratic.

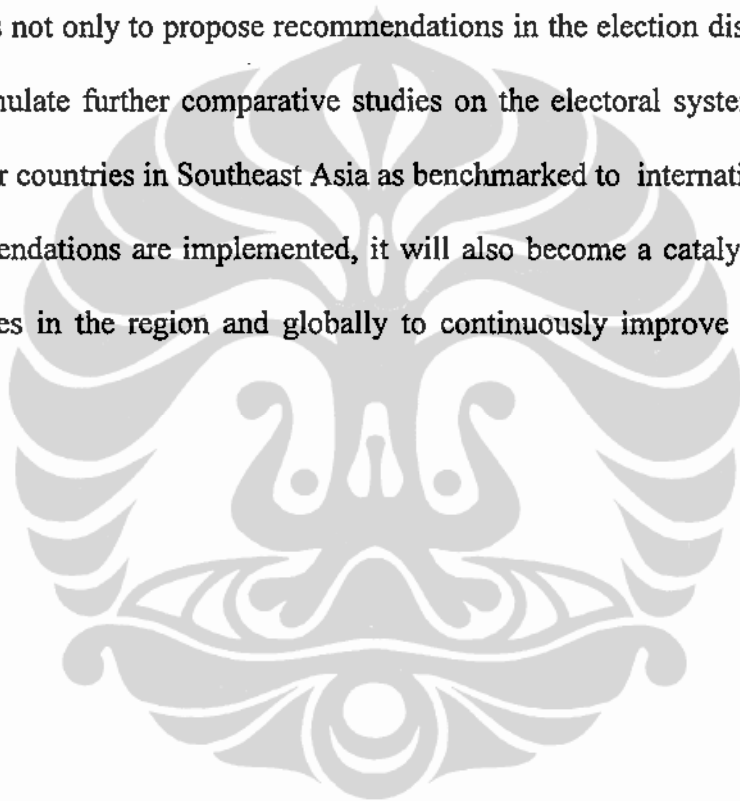
In relation to the first standard of the international electoral standards (structuring the legal framework), the conclusion and recommendations of this study are very much in line with this standard. Moreover, this study gives some recommendations to reform the legal framework in these selected countries which on particular issues have not complied with the standard.

The fifteenth standard namely compliance and enforcement of electoral laws has received greater attention in this study. As such, there are more recommendations to promote the compliance and enforcement of electoral laws in Indonesia, Malaysia, Singapore and the Philippines. The recommendations need to be implemented in order to fill the gaps which exist in the legal framework.

Based on the conclusion and recommendations presented above, a new standard also needs to be added to the fifteen electoral standards, namely, "settlement of election disputes."

This new standard should cover both substantial and procedural issues, such as ground of election petition and the institution which has roles in the election petition settlement process. This could be the sixteenth standard. Thus, the fifteenth standard is with regard to the enforcement of election laws and the criminal process aspects, while the sixteenth standard focus on the settlement of election disputes. By adding the new standard, each country will give more attention to the settlement of election disputes in developing and reforming its legal framework.

The purpose of this study is not only to propose recommendations in the election dispute settlement system, but also to stimulate further comparative studies on the electoral system to make elections more democratic for countries in Southeast Asia as benchmarked to international electoral standards. If the recommendations are implemented, it will also become a catalyst or working example to other countries in the region and globally to continuously improve their election system.



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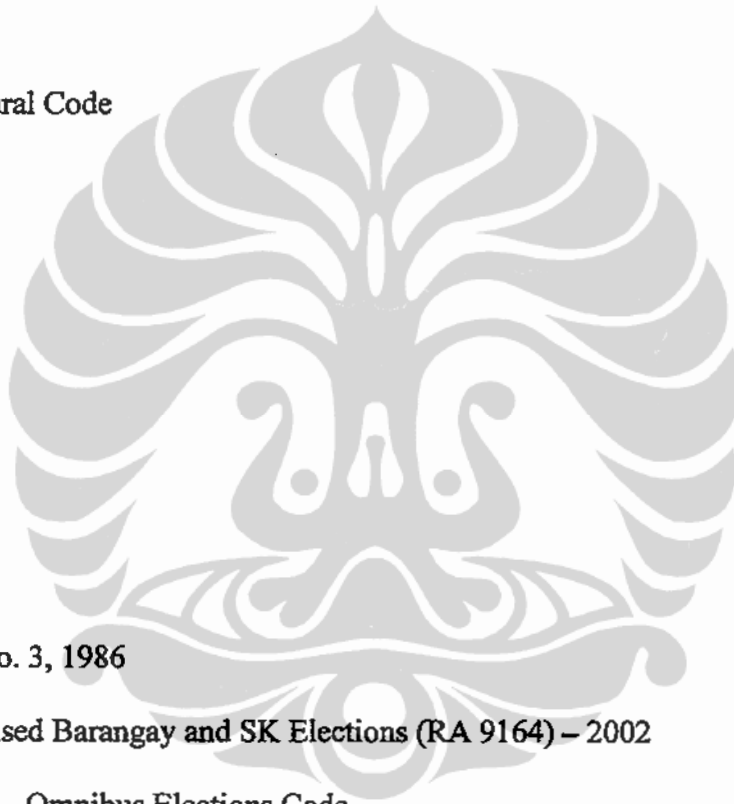
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### Appendix 1

#### Results of the 1955 Parliamentary General Elections in Indonesia

No	Political Parties	Number of Valid Votes	Percentage of all votes	Number of Seats	Number of Seats in DPRS
1	<i>Partai Nasional Indonesia/</i> PNI (Indonesian National Party)	8,434,653	22.3	57	42
2	<i>Masyumi (Majelis Syuro Muslimin Indonesia)</i>	7,903,886	20.9	57	44
3	<i>Nahdatul Ulama (NU)</i>	6,955,141	18.4	45	8
4	<i>Partai Komunis Indonesia/</i> PKI (Indonesian Communist Party)	6,179,914	16.4	39	17
5	<i>Partai Syarikat Islam Indonesia/PSII (Indonesian Islamic Company Party)</i>	1,091,160	2.9	8	4
6	<i>Partai Kristen Indonesia/</i> Parkindo (Indonesian Christian Party)	1,003,325	2.6	8	5
7	<i>Partai Katolik (Catholic Party)</i>	770,740	2.0	6	8
8	<i>Partai Sosialis Indonesia/</i> PSI (Indonesian Socialist Party)	753,191	2.0	5	14
9	<i>Ikatan Pendukung Kemerdekaan Indonesia/IPKI (IPKI Party)</i>	541,306	1.4	4	-
10	<i>Perhimpunan Tarbiyah Islamiyah/ Perti</i>	483,014	1.3	4	1

	(Association on Islamic Education)				
11	<i>Partai Rakyat Nasional/ PRN (People National Party)</i>	242,125	0.6	2	13
12	<i>Partai Buruh (Labor Party)</i>	224,167	0.6	2	6
13	<i>Gerakan Pembela Pancasila/GPPS (Pancasila Defence Movement)</i>	219,986	0.6	2	-
14	<i>Partai Rakyat Indonesia/ PRI (Indonesian People Party)</i>	206,261	0.5	2	-
15	<i>Persatuan Pegawai Polisi Republik Indonesia/PPPRI</i>	200,419	0.5	2	-
16	<i>Partai Murba (Murba Party)</i>	199,588	0.5	2	4
17	<i>Baperki (Badan Permusyawaratan Indonesia)</i>	178,887	0.5	1	-
18	<i>PIR (Partai Indonesia Raya) – Wongsonegoro.</i>	178,481	0.5	1	1
19	<i>Gerinda</i>	154,792	0.4	1	-
20	<i>Permai (Persatuan Marhaen)</i>	149,287	0.4	1	-
21	<i>Partai Persatuan Daya (Daya Union Party)</i>	146,054	0.4	1	-
22	<i>PIR (Partai Indonesia Raya)- Hazairin</i>	114,644	0.3	1	18
23	<i>PPTI (Partai Persatuan Tharikhah Islam)</i>	85,131	0.2	1	-
24	<i>AKUI</i>	81,454	0.2	1	-

25	<i>Partai Rakyat Desa/PRD</i> (Village People Party)	77,919	0.2	1	-
26	<i>Partai Rakyat Indonesia Merdeka/ PRIM</i> (Indonesian Independence People Party)	72,523	0.2	1	-
27	<i>Acoma (Angkatan Komunis Muda)</i>	64,514	0.2	1	-
28	<i>R. Soedjono Prawirosoedarso dan kawan-kawan</i>	53,305	0.1	1	-
29	<i>Partai-partai, organisasi-organisasi, calon-calon perorangan (Political parties, organizations, independence candidates)</i>	1,022,433	2.7	-	46
	Total	37,785,299	100.0	257	233

Source: A. van Marie, as quoted by Herbeth Feith.

## Appendix 2

### The Votes and DPR Seats Obtained from Results 1971, 1977, 1982, 1987, 1992, and 1997 General Elections in Indonesia

General election	PPP	%	Golkar	%	PDI	%
1971	14,833,942 (96 seats)	27.11	34,348,673 (236 seats)	62.80	5,516,894 (30 seats)	10.09
1977	18,722,138 (99 seats)	29.29	39,313,354 (232 seats)	62.11	5,459,987 (29 seats)	8.60
1982	20,871,880 (61 seats)	27.78	48,334,724 (242 seats)	64.34	5,919,702 (24 seats)	7.88
1987	13,701,428 (61 seats)	15.97	62,783,680 (299 seats)	73.16	9,324,708 (40 seats)	10.89
1992	16,624,647 (62 seats)	17.0	66,599,331 (282 seats)	68.1	14,565,556 (56 seats)	14.9
1997	25,340,028 (89 seats)	22.43	84,187,907 (seats)	74.54	3,463,225 (11 seats)	3.07

Source: Process from LPU/KPU data

### Appendix 3

#### Votes and Seats of political parties in 1999 General Elections in Indonesia

No	Party	Votes	Seats
1	<i>Partai Demokrasi Indonesia Perjuangan</i> (Indonesian Democratic Party of Struggle)	35,621,436	153
2	<i>Partai Golongan Karya</i> (Golkar Party)	23,675,511	120
3	<i>Partai Persatuan Pembangunan</i> (United Development Party)	11,313,037	58
4	<i>Partai Kebangkitan Bangsa</i> (National Awakening Party)	13,321,837	51
5	<i>Partai Amanat Nasional</i> (National Mandate Party)	7,504,900	34
6	<i>Partai Bulan Bintang</i> (Crescent Star Party)	2,046,773	13
7	<i>Partai Keadilan</i> (Justice Party)	1,431,482	7
8	<i>Partai Demokrasi Kasih Bangsa</i> (Love Nation Democratic Party)	550,221	5
9	<i>Partai Nahdatul Umat</i> (Nahdatul Community Party)	677,030	5
10	<i>Partai Keadilan dan Persatuan</i> (Justice and Unity Party)	1,064,742	4
11	<i>Partai Demokrasi Indonesia</i>	646,030	2

	(Indonesian Democratic Party)		
12	<i>Partai Persatuan</i> (Unity Party)	546,388	1
13	<i>Partai Politik Islam Indonesia Masyumi</i> (Indonesian Islamic Party of Masyumi)	456,207	1
14	<i>Partai Daulat Rakyat</i> (Daulat Rakyat Party)	427,461	1
15	<i>Partai Syarikat Islam Indonesia</i> (Indonesian Islamic Company Party)	375,408	1
16	<i>Partai Nasional Indonesia-FM</i> (Indonesian National Party – Marhaein Front)	364,838	1
17	<i>Partai Bhineka Tunggal Ika</i> (Bhineka Tunggal Ika Party)	359,919	1
18	<i>PNI Massa Marhaein</i> (Mass Marhaenis Indonesian National Party)	345,452	1
19	<i>Partai IPKI</i> (IPKI Party)	328,166	1
20	<i>Partai Kebangkitan Umat</i> (Community Awakening Party)	299,816	1
21	<i>Partai Katolik Demokrat</i> (Democratic Catholic Party)	215,546	1

Source: Indonesian General Election Commission (KPU)

#### Appendix 4

### The Allocation of Parliament Seats for Each Province in the 1999 and 2004 General Elections in Indonesia

Province	Resident	Seats in 1999 elections	Seats in 2004 elections
Nanggroe Aceh Darussalam	4,227,000	12	13
Sumatera Utara	11,890,399	24	29
Sumatera Barat	4,466,697	14	14
Riau	4,425,100	7	11
Riau Kepulauan	1,152,132	3	3
Jambi	2,575,731	6	7
Sumatera Selatan	6,503,918	12	16
Kepulauan Bangka Belitung	982,068	3	3
Bengkulu	1,521,200	4	4
Lampung	6,945,786	15	17
DKI Jakarta	8,622,065	18	21
Jawa Barat	38,059,552	79	90
Banten	8,977,896	3	22
Jawa Tengah	32,114,351	60	76
DIY	3,209,405	6	8
Jawa Timur	36,234,550	68	86
Bali	3,357,113	9	9
Nusa Tenggara Barat	4,015,102	9	11
Nusa Tenggara Timur	4,083,639	13	13
Kalimantan Barat	3,958,448	9	10
Kalimantan Tengah	1,832,185	6	6
Kalimantan Selatan	3,181,130	11	11
Kalimantan Timur	2,712,492	7	7
Sulawesi Utara	2,131,685	4	6
Gorontalo	883,099	3	3

Sulawesi Tengah	2,215,449	5	6
Sulawesi Selatan	8,233,375	24	24
Sulawesi Tenggara	1,881,512	5	5
Maluku	1,220,800	3	3
Maluku Utara	855,627	3	3
Papua	1,966,800	10	10
Irian Jaya Barat	391,300	3	3
<b>Total</b>	<b>214,827,606</b>	<b>458</b>	<b>550</b>

Source: [www.kpu.go.id](http://www.kpu.go.id)





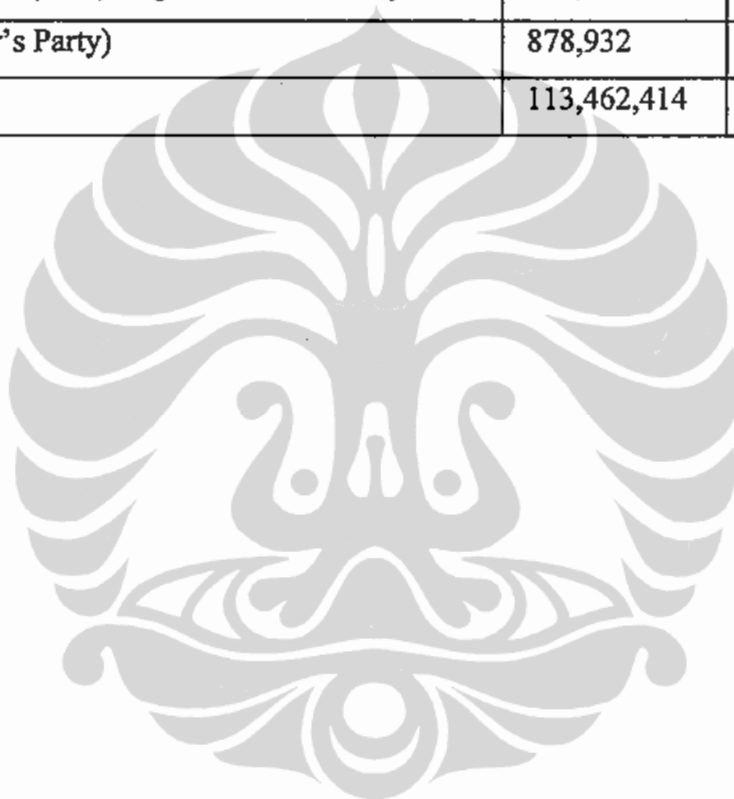
## Appendix 5

### Votes of political parties in the 2004 General Elections in Indonesia

No.	Political Party	Votes	%
1.	<i>PNI Marhaenisme</i> (Marhaenisme Indonesian National Party)	923,159	0.81
2.	<i>Partai Buruh Sosial Demokrat</i> (PBSD) Social Democratic Labor Party	636,397	0.56
3.	<i>Partai Bulan Bintang</i> (PBB) Crescent Star Party	2,970,487	2.62
4.	<i>Partai Merdeka</i> (Freedom Party)	842,541	0.74
5.	<i>Partai Persatuan Pembangunan</i> (PPP) United Development Party	9,248,764	8.15
6.	<i>Partai Persatuan Demokrasi Kebangsaan</i> (PPDK) United Democratic Nationhood Party	1,313,654	1.16
7.	<i>Partai Perhimpunan Indonesia Baru</i> (PIB) New Indonesian Alliance Party	672,952	0.59
8.	<i>Partai Nasional Banteng Kemerdekaan</i> (PNBK) Freedom Bull National Party	1,230,455	1.08
9.	<i>Partai Demokrat</i> (PD) Democratic Party	8,455,225	7.45
10.	<i>Partai Keadilan dan Persatuan Indonesia</i> (PKPI) Indonesia Justice and Unity Party	1,424,240	1.26
11.	<i>Partai Penegak Demokrasi Indonesia</i> (PPDI) Indonesian Democratic Vanguard Party	855,811	0.75
12.	<i>Partai Persatuan Nahdlatul Ummah Indonesia</i> (PPNUI) Indonesian Nahdatul Community Party	895,610	0.79
13.	<i>Partai Amanat Nasional</i> (PAN) National Mandate Party	7,303,324	6.44
14.	<i>Partai Karya Peduli Bangsa</i> (PKPB) Concern for the Nation Functional Party	2,399,290	2.11
15.	<i>Partai Kebangkitan Bangsa</i> (PKB) National Awakening Party	11,989,564	10.57
16.	<i>Partai Keadilan Sejahtera</i> (PKS) Prosperous Justice Party	8,325,020	7.34

17.	<i>Partai Bintang Reformasi (PBR) Reform Star Party</i>	2,764,998	2.44
18.	<i>Partai Demokrasi Indonesia Perjuangan (PDIP) Indonesian Democratic Party of Struggle</i>	21,026,629	18.53
19.	<i>Partai Damai Sejahtera (PDS) Prosperous Peace Party</i>	2,414,254	2.13
20.	<i>Partai Golongan Karya (Golkar Party)</i>	24,480,757	21.58
21.	<i>Partai Patriot Pancasila (Pancasila Patriot's Party)</i>	1,073,139	0.95
22.	<i>Partai Sarikat Indonesia (PSI) Indonesian Unity Party</i>	679,296	0.60
23.	<i>Partai Persatuan Daerah (PPD) Regional United Party</i>	657,916	0.58
24.	<i>Partai Pelopor (Pioneer's Party)</i>	878,932	0.77
TOTAL		113,462,414	100

Source: [www.kpu.go.id](http://www.kpu.go.id)



## Appendix 6

### Votes and Seats of political parties in the 2004 Indonesian General Elections

No.	Political Party	Votes	Seats
1.	<i>PNI Marhaenisme</i> (Marhaenisme Indonesian National Party)	923,159	1
2.	<i>Partai Buruh Sosial Demokrat</i> (PBSD) Social Democratic Labor Party	636,397	0
3.	<i>Partai Bulan Bintang</i> (PBB) Crescent Star Party	2,970,487	11
4.	<i>Partai Merdeka</i> (Freedom Party)	842,541	0
5.	<i>Partai Persatuan Pembangunan</i> (PPP) United Development Party	9,248,764	58
6.	<i>Partai Persatuan Demokrasi Kebangsaan</i> (PPDK) United Democratic Nationhood Party	1,313,654	5
7.	<i>Partai Perhimpunan Indonesia Baru</i> (PIB) New Indonesian Alliance Party	672,952	0
8.	<i>Partai Nasional Banteng Kemerdekaan</i> (PNBK) Freedom Bull National Party	1,230,455	1
9.	<i>Partai Demokrat</i> (PD) Democratic Party	8,455,225	57
10.	<i>Partai Keadilan dan Persatuan Indonesia</i> (PKPI) Indonesia Justice and Unity Party	1,424,240	1
11.	<i>Partai Penegak Demokrasi Indonesia</i> (PPDI) Indonesian Democratic Vanguard Party	855,811	1
12.	<i>Partai Persatuan Nahdlatul Ummah Indonesia</i> (PPNUI) Indonesian Nahdatul Community Party	895,610	0
13.	<i>Partai Amanat Nasional</i> (PAN) National Mandate Party	7,303,324	52
14.	<i>Partai Karya Peduli Bangsa</i> (PKPB) Concern for the Nation Functional Party	2,399,290	2
15.	<i>Partai Kebangkitan Bangsa</i> (PKB) National Awakening Party	11,989,564	52

16.	<i>Partai Keadilan Sejahtera</i> (PKS) Prosperous Justice Party	8,325,020	45
17.	<i>Partai Bintang Reformasi</i> (PBR) Reform Star Party	2,764,998	13
18.	<i>Partai Demokrasi Indonesia Perjuangan</i> (PDIP) Indonesian Democratic Party of Struggle	21,026,629	109
19.	<i>Partai Damai Sejahtera</i> (PDS) Prosperous Peace Party	2,414,254	12
20.	<i>Partai Golongan Karya</i> (Golkar Party)	24,480,757	128
21.	<i>Partai Patriot Pancasila</i> (Pancasila Patriot's Party)	1,073,139	0
22.	<i>Partai Sarikat Indonesia</i> (PSI) Indonesian Unity Party	679,296	0
23.	<i>Partai Persatuan Daerah</i> (PPD) Regional United Party	657,916	0
24.	<i>Partai Pelopor</i> (Pioneer's Party)	878,932	2
	JUMLAH	113,462,414	550

Source : [www.kpu.go.id](http://www.kpu.go.id)



### Appendix 7

#### Seats Obtained by Political Parties in Parliament (DPR) After Constitution Court Decisions in Indonesia (2004)

No	Political Party	Seats by KPU decree	Seats after MK Decision	Notes
1.	Golkar Party	128	128	no change
2.	PDIP	109	109	no change
3.	PKB	52	52	no change
4.	PPP	58	58	no change
5.	Democratic Party	57	55	Decrease two seats (changing over to PAN and Partai Pelopor)
6.	PKS	45	45	no change
7.	PAN	52	53	Increase one seat, Sulawesi Tengah constituency (changing over from Partai Demokrat seat)
8.	PBB	11	11	no change
9.	PBR	13	14	Increase one seat, Kalimantan Barat constituency (changing over from PNBK)
10.	PDS	12	13	Increase one seat, Irian Jaya Barat constituency (changing

				over from PDK)
11.	PKPB	2	2	no change
12.	PKPI	1	1	no change
13.	PDK	5	4	Decrease one seat (changing over to PDS)
14.	PNBK	1	0	Decrease one seat (changing over to PBR)
15.	<i>Patriot Pancasila Party</i>	0	0	no change
16.	<i>PNI Marhaenis</i>	1	1	no change
17.	PPNUI	0	0	no case
18.	<i>Partai Pelopor (Pioneer's Party)</i>	2	3	Increase one seat, Papua constituency (changing over from Partai Demokrat)
19.	PDI Party	1	1	no change
20.	<i>Partai Merdeka (Independence Party)</i>	0	0	no change
21.	PSI	0	0	no change
22.	PIB	0	0	no change
23.	PPD	0	0	no change

24.	PBSD	0	0	no change
	Total	550	550	

Source: *Berita Mahkamah Konstitusi* [Constitutional Court News], No. 5, June-July, 2004.



## Appendix 8

### Votes of political parties in the 1999 General Elections in Malaysia

Party	Votes for Parliament	Percentage	Votes for Level State	Percentage
<i>Barisan Nasional</i> (BN)	3,772,931	56.5	2,941,812	57.0
<i>Parti Islam SeMalaysia</i> (PAS)	1,075,491	16.1	1,336,742	25.9
Democratic Action Party (DAP)	799,903	11.9	564,750	10.9
<i>Parti Keadilan</i>	752,295	11.2	286,077	5.5
<i>Parti Rakyat Malaysia</i>	68,645	1.0	17,998	0.4
<i>Parti Bersatu Sabah</i> (PBS)	140,649	2.1	-	-
<i>Barisan Jama'ah Islamiah SeMalaysia</i>	809	0.01	-	-
<i>Parti Angkatan Keadilan Insan Malaysia</i>	274	0.004	72	0.01
<i>Parti Reformasi Negeri</i>	23,354	0.35	-	-
Malaysian Democratic Party	6,459	0.1	5,629	0.1
Independent	27,154	0.4	6,627	0.1
	6,667,567		5,159,707	

Source: Election Report 1999



## Appendix 9

### Parliament Seats of Political Parties in 1995 and 1999 General Elections in Malaysia

Party	1995	1999
<i>Barisan Nasional (BN)</i>	162 <sup>1</sup>	148 <sup>2</sup>
<i>Parti Islam SeMalaysia (PAS)</i>	7	27
<i>Democratic Action Party (DAP)</i>	9	10
<i>Parti Keadilan</i>	-	5
<i>Parti Rakyat Malaysia</i>	0	0
<i>Parti Bersatu Sabah (PBS)</i>	8	3
<i>Barisan Jama'ah Islamiah SeMalaysia</i>	0	0
<i>Parti Angkatan Keadilan Insan Malaysia</i>	0	0
<i>Parti Reformasi Negeri</i>	-	0
<i>Malaysian Democratic Party</i>	-	0
<i>Independent</i>	-	0
	184	193









Source: Election Report 1995, 1999

<sup>1</sup> UMNO (88), MCA (30), MIC (7), Gerakan (7), PBB (10), PBDS (5), UPKO (1), SNAP (3), SUPP (7), SAPP (2), LDP (1), Independent Candidate (1).

<sup>2</sup> UMNO (72), MCA (28), MIC (7), Gerakan (7), PBB (10), PBDS (6), UPKO (3), SNAP (4), SUPP (7), SAPP (2), LDP (1), Independent Candidate (1).

### Appendix 10

#### Parliament Seats of Political Parties in 2008 General Elections in Malaysia

STATE	NUMBER OF SEATS	BN		PAS		DAP		PKR		TOTAL
										
		CLN	MTB	CLN	MTB	CLN	MTB	CLN	MTB	
Perlis	3	3	0	0	0	0	0	0	0	3
Kedah	15	4	0	6	0	0	0	5	0	15
Kelantan	14	2	0	9	0	0	0	3	0	14
Terengganu	8	7	0	1	0	0	0	0	0	8
Pulau Pinang	13	2	0	0	0	7	0	4	0	13
Perak	24	13	0	2	0	6	0	3	0	24
Pahang	14	12	0	0	0	0	0	2	0	14
Selangor	22	5	0	4	0	4	0	9	0	22
W.P. Kuala Lumpur	11	1	0	1	0	5	0	4	0	11
W.P. Putrajaya	1	1	0	0	0	0	0	0	0	1
Negeri Sembilan	8	5	0	0	0	2	0	1	0	8
Melaka	6	5	0	0	0	1	0	0	0	6
Johor	26	24	1	0	0	1	0	0	0	26
W.P. Labuan	1	1	0	0	0	0	0	0	0	1
Sabah	25	22	2	0	0	1	0	0	0	25
Sarawak	31	25	5	0	0	1	0	0	0	31
<b>Total</b>	<b>222</b>	<b>132</b>	<b>8</b>	<b>23</b>	<b>0</b>	<b>28</b>	<b>0</b>	<b>31</b>	<b>0</b>	<b>222</b>

CLN - Calon Yang Menang/ The winner Candidate

MTB - Menang tanpa bertanding/ Win without Election

Source: <http://pru12.spr.gov.my/spr/index.php>

**Appendix 11**  
**Singapore General Elections Since 1955**

<b>Date</b>	<b>Number of Seat</b>	<b>Number of Parties</b>	<b>Party returned Contesting</b>	<b>Number of Seats Won</b>	<b>Percentage of Valid Votes Won</b>
Legislative Assembly 1955 April 2	25	5 and 11 independents	Labor Front	10	27.06
1959 May 30	51	10 and 39 independents	PAP	43	54.08
1963 September 21	51	8 and 16 independents	PAP	37	46.93
Parliament 1968 April 13	7 + (51)	2 and 5 independents	PAP	58	86.72
1972 September 2	57 + (8)	6 and 2 independents	PAP	65	70.43
1976 December 23	53 + (16)	7 and 2 independents	PAP	69	74.09
1980 December 23	38 + (37)	8	PAP	75	77.66
1984 December 22	49 + (30)	9 and 3 independents	PAP	77	64.83
1988 September 3	70 + (11)	8 and 4 independents	PAP	80	63.17
1991 August 31	40 + (41)	6 and 7 independents	PAP	77	60.97
1997 January 2	36 + (47)	6 and 1 independents	PAP	81	64.98
2001	29 + (55)	5 and 2	PAP	82	75.29

November 3		independents			
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Source : Elections Department

**Notes :**

- a. Uncontested seats are shown in brackets
- b. The 1955 Legislative Assembly consisted of one speaker, three ex-officio members, 25 elected members and four nominated members.



## Appendix 12

### Summary of the 6 May 2006 Parliament of Singapore Election Results

Parties and alliances	Leader	Contested seats	Seats won	Popular vote	%	+/-
People's Action Party	Lee Hsien Loong	84	82 <sup>†</sup>	747,860	66.60	-8.69
Workers' Party	Low Thia Kiang	20	1	183,604	16.34	+13.30
Singapore Democratic Alliance <ul style="list-style-type: none"> <li>• National Solidarity Party</li> <li>• <i>Pertubuhan Kebangsaan Melayu Singapura</i></li> <li>• Singapore Justice Party</li> <li>• Singapore People's Party</li> </ul>	Chiam See Tong	20	1	145,902	12.99	+0.96
Singapore Democratic Party	Chee Soon Juan	7	0	45,634	4.07	-4.04
<b>Total</b>			84	1,123,000	100.0	
Spoilt votes				26,727	-	
Did not vote				97,000	-	
<b>Total voting electorate</b>				1,222,884	-	
<sup>†</sup> includes uncontested victories						

Source: <http://www.singapore-elections.com/>

### Appendix 13

#### Seats of Political Parties for House of Representative in the Philippines 1987-2001

Political Party	1987	1992	1995	1998	2001
<i>Lakas NUCD-UMDP</i>	-	40	100	111	73
<i>Lakas-Laban coalition</i> <sup>3</sup>	-	-	25	-	-
<i>NPC</i>	-	30	22	9	40
<i>LDP</i>	-	86	17	-	21
<i>LP</i>	16	-	5	15	19
<i>NP</i>	4	7	1	-	-
<i>LP-PDP-Laban</i>	-	11	-	-	-
<i>PDP-Laban</i>	43	-	1	0	1
<i>Reporma-LM</i>	-	-	-	4	3
<i>PROMDI</i>	-	-	-	4	3
<i>Aksyon Demokratiko</i>	-	-	-	1	12
<i>PMP</i>	-	-	1	-	2
<i>Lakas ng Bansa</i>	24	-	-	-	-
<i>UNIDO</i>	19	-	-	-	-
<i>KBL</i>	11	3	1	-	-
<i>GAD</i>	2	-	1	-	-
<i>PnB</i>	2	-	-	-	-
<i>Lakas ng Bayan</i>	1	-	-	-	-
<i>Partido Demokratiko Sosyalista ng Pilipinas</i>	-	-	-	-	1
<i>LAMMP</i>	-	-	-	55	-
<i>OMPIA</i>	-	-	-	1	1
Opposition coalition	-	-	1	-	-
People's Reform Party	-	-	0	-	-

<sup>3</sup> The Lakas NUCD-UMDP and LDP

Hybrid Coalition	-	-	0	-	-
Not Indicated	-	-	-	-	20
Coalitions	-	14 <sup>4</sup>	1	-	-
Others	55 <sup>5</sup>	2	14	4	12
Independents	23	6	7	2	8
Total	200	199	204	206	206

Source : COMELEC



<sup>4</sup> Alliance among two or more national and /or local parties

<sup>5</sup> Includes 49 seats that run under various coalitions and six minor parties.

## Appendix 14

### Summary of the 14 May 2007 House of Representatives of the Philippines Election Results<sup>6</sup>

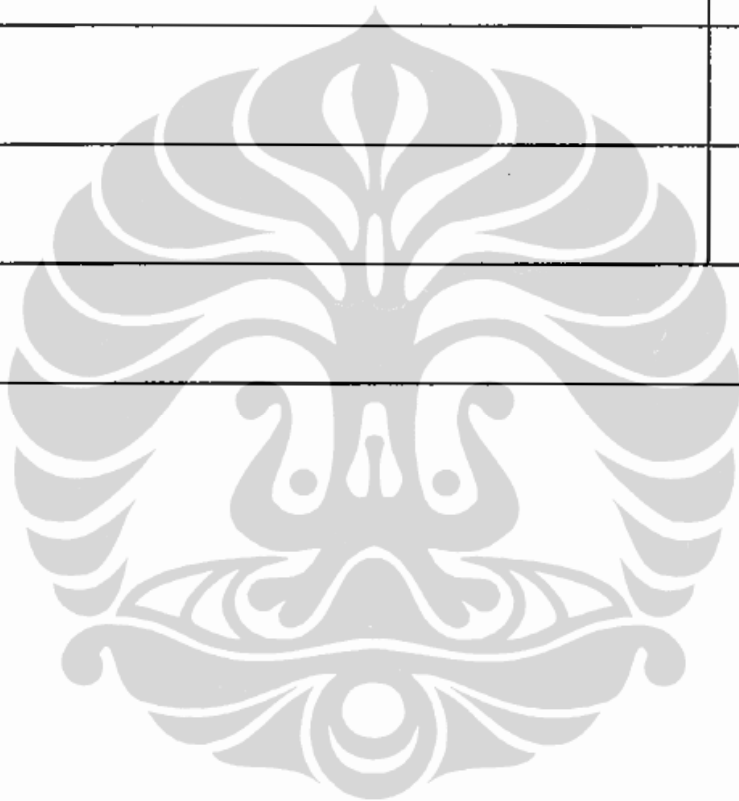
Parties	Seats
<p>This is the division of seats as published on the website of the House of Representatives. The first party affiliation mentioned is counted. This is not the result of the elections.</p>	
Lakas-Christian Muslim Democrats (Includes SARRO, BO-PK, PROMDI, KDT and UNA)	70
<i>Kabalikat ng Malayang Pilipino</i> (Includes Padajon Surigao, 1-CEBU, UNA and PTM)	47
Nationalist People's Coalition (Includes Achievers with Integrity Movement)	26
Liberal	16
<i>Nacionalista Party</i> (Includes Abante Viscaya)	6
<i>Partido ng Demokratikong Pilipino-Lakas ng Bayan</i>	4
<i>Partido Demokratiko Sosyalista ng Pilipinas</i>	3
<i>Laban ng Demokratikong Pilipino</i>	3
Genuine Opposition	3

<sup>6</sup> [http://en.wikipedia.org/wiki/Philippine\\_general\\_election,\\_2007](http://en.wikipedia.org/wiki/Philippine_general_election,_2007)



Pwersa ng Masang Pilipino	3
Koalisyon ng mga Pulitikong na Maka-Administrasyon	3
Independents (Caucuses with the Genuine Opposition)	5
Buhay Hayaan Yumabong	3
Bayan Muna	2
Citizen's Battle Against Corruption	2
Gabriela Women's Party	2
Association of Philippine Electric Cooperatives	2
Kilusang Bagong Lipunan	1
Abono	1
Advocacy for Teacher Empowerment through Action, Cooperation and Harmony Towards Educational Reforms, Inc.	1
Agricultural Sector Alliance of the Philippines, Inc.	1
Akbayan ! Citizens' Action Party	1
Alliance of Rural Concerns	1

Anak Mindanao	1
Anak Pawis	1
An Waray	1
Cooperative–Natco Network Party	1
Luzon Farmers Party	1
<b>Total</b>	<b>237</b>
Source: Congress Web site	



## Appendix 15

### Political Parties as Participants in the 2004 Indonesian General Elections

No	Political Party	Notes
1	PNI Marhaenisme (Marhaenisme Indonesian National Party)	This party revived in the 1999 General Election as PNI Supeni but could not pass electoral threshold and then it was renamed in 20 May 2002. This party is led by Soekarno daughter and Megawati sister, Sukmawati Soekarnoputri.
2	Partai Buruh Sosial Demokrat (PBSD) Social Democratic Labour Party	This party founded in 1998 as Partai Buruh Nasional (National Labor Party), In 1 May 2001, it was renamed to contest the 2004 General Election. This party is led by labor activist and SBSI leader, Muchtar Pakpahan.
3	Partai Bulan Bintang (PBB) Crescent Star Party	This party was founded in 17 July 1998 as the successor party of Masyumi. From 1998 to 2004, this party was led by Law Professor Yuzril Ihza Mahendra. This party is currently led by MS Ka'ban. The ideology of PBB is Islam.
4	Partai Merdeka (Freedom Party)	This party was founded in 10 October 2002 and led by Adi Sasono. In the 2004 General Election, this party could not gain any seat in DPR.
5	Partai Persatuan Pembangunan (PPP) United Development Party	Founded in 1973 by merging four Islamic parties during the New Order era. It was one of three parties before the 1999 General Election, along with Golkar and PDI. This party previously was led by former vice president,

		Hamzah Haz and currently is led by Suryadarma Ali.
6	Partai Persatuan Demokrasi Kebangsaan (PPDK) United Democratic Nationhood Party	This new party was founded in 22 July 2002 and led by former minister of regional autonomy, Prof. Ryaas Rasyid. The important program of the party is completing regional autonomy.
7	Partai Perhimpunan Indonesia Baru (PIB) New Indonesian Alliance Party	This new party was founded in 22 March 2002. Its founder and leader was a prominent economist Dr. Sjahrir. The main platforms of the party are social justice, democracy, and prosperity.
8	Partai Nasional Banteng Kemerdekaan (PNBK) Freedom Bull National Party	This party was set up in 25 July 2002 led by journalist Eros Djarot. The party is a nationalist party. The main program is national unity, independence and "Indonesian socialism".
9	Partai Demokrat (PD) Democratic Party	This new party often considered as a rising star in the 2004 General Election together with Prosperous Justice Party. It was founded in 9 September 2001. Its leader is Prof. Subur Budhisantoso. The party could not separate with Susilo Bambang Yudhoyono, and by supporting him, it gained 7.45 percent of the votes.
10	Partai Keadilan dan Persatuan Indonesia (PKPI) Indonesia Justice and Unity Party	Initially this party was Partai Keadilan dan Persatuan (Justice and Unity party) which contested in the 1999 General Election, but could not pass the electoral threshold. To be a participant of the 2004 General Election, the party changed its name as PKPI. The party was led by retired general Edi Sudradjat and currently is led by Meutia Hatta. Its platform is

		to promote nationalism and national ideology Pancasila.
<b>11</b>	Partai Penegak Demokrasi Indonesia (PPDI) Indonesian Democratic Vanguard Party	This party is the successor of PDI in New Order era founded by merging a number of nationalist and Christian parties. The party is led by Dimmy Haryanto.
<b>12</b>	Partai Persatuan Nahdlatul Ummah Indonesia (PPNUI) Indonesian Nahdlatul Ummah Party	This party was founded in 5 March 2003 and supported by members of Nahdlatul Ulama community. The party is led by KH. Sjukron Makmun. Its ideology is Islam.
<b>13</b>	Partai Amanat Nasional (PAN) National Mandate Party	Establish in 23 August 1998 and become the big six in the 1999 General Election. Since 1998 until 2004 the party was led by a reformer Amien Rais. Currently the leader is Sutrisno Bachir. This party is supported by muslim modernist, and Muhammadiyah follower. The party fights for completing reformation agenda.
<b>14</b>	Partai Karya Peduli Bangsa (PKPB) Concern for the Nation Functional Party	This party was founded in 9 September 2002 and led by retired general Hartono and also supported by Soeharto daughter Siti Hardiyanti Rukmana (mbak Tutut).
<b>15</b>	Partai Kebangkitan Bangsa (PKB) National Awakening Party	This party was set up in 23 July 1998 by Nahdlatul Ulama senior leader Abdurrahman Wahid (Gus Dur). The party is gain majority support from NU community, especially in East and Central Java.
<b>16</b>	Partai Keadilan Sejahtera (PKS) Prosperous Justice Party	This party was established in 1998 as Justice Party, and had a new name Prosperous Justice Party in 20 April 2002 to run the 2004 General

		Election. The party become “rising star” in The 2004 General Election and gain 7.34 percent (45 seats in DPR). The party was led by Islamic activist Dr. Hidayat Nurwahid, and currently is led by its young leader Tifatul Sembiring. Islam is the Basic values of this party which fight for combating corruption.
17	Partai Bintang Reformasi (PBR) Reform Star Party	This party is founded in 20 January 2002 by former PPP leader and a well known cleric KH Zainuddin MZ. This party is supported by some former PPP leaders.
18	Partai Demokrasi Indonesia Perjuangan (PDIP) Indonesian Democratic Party of Struggle	This party was founded in 1999 and led by Soekarno daughter Megawati Soekarnoputri. This party was the winner in the 1999 General Election. The party is the biggest nationalist party in Indonesia.
19	Partai Damai Sejahtera (PDS) Prosperous Peace Party	This party was established in 1 October 2001 and merger of a number of some Christian parties. This party is led by Ruyandi Hutasoit.
20	Partai Golongan Karya (Golkar Party)	This is the oldest party in Indonesia established in 20 October 1964 as a collection of some functional groups. Golkar was the winner of all New Order general elections since 1971-1998. It's lost the position in the 1999 General Election. This party was led by Akbar Tanjung, and currently headed by Jusuf Kalla.
21	Partai Patriot Pancasila (Pancasila Patriot's Party)	This new party was founded in 1 June 2001 Yapto S. Soerjosoemarno, a former prominent Golkar leader. Its main supporter comes from Pemuda Pancasila organization.
22	Partai Sarikat Indonesia	This new party was founded in 20 December

	(PSI) Indonesian Unity Party	2002. The party promotes political and economic reform.
23	Partai Persatuan Daerah (PPD) Regional United Party	This party was set up in 18 November 2002 founded by some former members of the regional function in MPR. This party is led by Oesman Sapta.
24	Partai Pelopor (Pioneer's Party)	This party was founded in 29 August 2002 and led by Megawati sister, Rachmawati Soekarnoputri. Nationalist is the ideology of the party. This party gained three seats in DPR.

**Source :**

1. Komisi Pemilihan Umum, *Partai Politik Peserta Pemilu 2004* [Political Party Participants of 2004 General Election] (2004)
2. Koiruddin, *Profile Pemilu 2004* [ The 2004 General Election Profile] (2004)
3. European Union Election Observation Mission to Indonesia, Final Report of the 2004 General Election (2004)

## Appendix 16

### List of Political Parties Registered in SPR Malaysia

No	Party	Notes
1	UMNO	The United Malays National Organization (UMNO) was established in 1946 as part of a movement against British plans for the colony, which Malays believed would cause the “submergence of the Malays” to other ethnic groups. Following World War II, the British proposed a unitary Malayan Union that would position the nine Malay states under one government and would grant equal political rights to all ethnic groups. UMNO swiftly formed an alliance with the Malayan Chinese Association (MCA) and the Malayan Indian Congress (MIC). This new coalition satisfied the British requirement that independence be granted only to a multi-ethnic leadership. Since the founding of what is now called the <i>Barisan Nasional</i> or National Front, several additional parties have joined the coalition. UMNO has remained the driving force of the coalition. In the 1999 elections, UMNO won 71 seats in parliament, and the party also controls 11 of 14 state legislatures.
2	Malaysian Chinese Association (MCA)	This party was founded in 1949 as a welfare organization. Assumed political role in the early 1950’s and teamed up with UMNO. The party is regarded as the second most important member in the coalition.
3	Malaysian Indian Congress (MIC)	This party established in 1946 and joined the Alliance in 1955. Its membership confined to Indians.
4	Barisan Jemaah Islamiah Se Malaysia	This party was formed by PAS dissident in 1977 after PAS was expelled. The party won almost one-third of the votes in the 1978 Kelantan State General Election.



	(BERJASA)	
5	Parti Gerakan Rakyat Malaysia (GERAKAN)  Malaysian People's Movement Party	Parti Gerakan Rakyat Malaysia (Malaysian People's Movement Party) was founded in 1968 by former members of the dissolved United Democratic Party and several "moderates" from the Labor Party. The party was established as a multiethnic alternative to the mostly ethnically-based Malaysian parties. In 1972, the party joined the ruling coalition, <i>Barisan Nasional</i> , although this decision was met with internal disagreement, and a few leaders left the party. Today, the party is viewed as a small, forward-looking member of <i>Barisan Nasional</i> with a predominately Chinese following, with its strongest base of support in Penang state. Gerakan holds seven seats in the parliament and 20 state assembly seats.
6	Parti Islam Se Malaysia (PAS)  Pan Malaysia Islamic Party	The Parti Islam SeMalaysia (PAS) is an Islamic party based on the Qur'an and the <i>hadiths</i> of the Prophet Muhammad. In 1951, following religious disagreements with the top leaders of UMNO, several Malay Islamic scholars in UMNO decided to form a new party, PAS. The aim of PAS was to unite all the Islamic scholars in Malaysia into one organization, and PAS differentiated itself from UMNO by supporting the integration of Islamic ideals into all political, social, and economic domains. The ultimate goal of PAS is to establish an Islamic state and to implement Syari'ah, or Islamic law. PAS has participated in every Malaysian general election since 1955. The party rejoined the <i>Barisan Nasional</i> from 1972 to 1977. PAS is the head of the opposition alliance and the most powerful opposition party in Malaysia.
7	Parti Tindakan	This party is a predominately Chinese-based party, derivative of the People's Action Party (PAP), the ruling

	Demokratik Democratic Action Party (DAP)	party of Singapore. When Singapore left the Malaysian Federation in 1965, the Malaysian branch of the PAP decided to continue its activities and formally registered as DAP in 1966. DAP presents itself as a democratic socialist alternative in Malaysian politics, following the demise of the Labor Party and Socialist Front. The vision of DAP is for a "Malaysian Malaysia," the recognition that Malaysia is a multi-cultural, multi-religious, and multi-lingual country and no one group is superior.
8	Parti Keadilan Nasional <sup>7</sup> (KeADILan)  National Justice Party	Keadilan is a multi-ethnic party formed in 1999 by activists in the reformasi movement. Wan Azizah Ismail, the wife of former Deputy Prime Minister Anwar Ibrahim, is the president of the party, and Anwar's friends, supporters, and sympathizers joined Keadilan as its leadership. Several of the party's leaders are new to politics and have backgrounds in civil society organizations and academia. For the 1999 elections, Keadilan joined forces with three other opposition parties – the Democratic Action Party, <i>Parti Rakyat Malaysia</i> , and PAS – to form the <i>Barisan</i> Alternative opposition coalition.
9	USNO (United Sabah National Organization)	Brought Sabah into Malaysia in 1963. Led by Tun Mustapha Datu Harun. Was the dominant party in the state till 1976 when it was ousted by BERJAYA. Expelled from the BN in 1984 but rejoined in June 1986.
10	PBS ( <i>Parti Bersatu Sabah</i> )  Sabah United Party	Founded by Datuk Seri Joseph Pairin Kitingan and other dissident BERJAYA members. Registered in 1985. Won a resounding victory, formed the new state government in April 1985. Admitted as a member of the BN in June 1986. Left the BN on October 15, 1990 and allied itself with the

<sup>7</sup> In August 2003, PRM merged with keADILan and gave birth to Parti Keadilan Rakyat (People's Justice Party or PKR)

		opposition alliance.
<b>11</b>	PBB ( <i>Parti Pesaka Bumiputera Bersatu</i> )	Dominant party in Sarawak formed by a merger of two parties the Iban-based <i>Parti Pesaka</i> and the Muslim –based <i>Parti Bumiputera</i> .

**Source :**

1. *Suruhanjaya Pilihanraya (2004)*
2. S.Sothi Rachagan, *Law and the Electoral Process in Malaysia (1993)*
3. Peter M. Manikas and Laura L. Thornton (Eds), *Political Parties in Asia Promoting Reform and Combating Corruption in Eight Countries (2003)*



**Appendix 17**  
**Political Parties in Singapore**

Political Party	Notes
Angkatan Islam Singapura	"Singapore Islamic Movement" in Malay, it was formerly known as PMIP. Contested only GE1988 in one seat.
Alliance	A political coalition made up of UMNO, MCA and SMU, which contested GE1955.
Barisan Sosialis	"Socialist Front" in Malay, it is the breakaway faction of PAP formed by Lim Chin Siong and Dr Lee Siew Choh on 13 August 1961. Once the strongest opposition party in Singapore, its MPs resigned their seats in 1966 over Singapore's "phoney" independence and boycotted elections, and could never make a comeback into Parliament after returning to the polls in 1972. In 1988, it merged with WP to strengthen the opposition.
Democratic Party	Formed in February 1955 just before GE1955, it was made up of the Mandarin-speaking upper-class, many whom were members of the Chinese Chamber of Commerce. One of the two mainstream parties with PP in the early days before the growth of LF and PAP, it later merged with PP to form LSP.
Democratic Progressive Party	Registered on 16 March 1973, it contested its first election only in 1997.
Katong United Residents' Association	A non-political organization originally formed to serve residents of Katong. Led by former LSP member and woman politician Felice Leon-Soh.
Labor Front	Led by David Marshall, it first raised in July 1954 as a coalition of two LP breakaway groups (one of them SSF) before full integration, and was ruling party of British-

	ruled Singapore from 1955 to 1959 before PAP took power. Saw two Chief Ministers, Marshall and his successor Lim Yew Hock. In 1959, the majority led by Lim abandoned LF to form SPA.
Labor Party	A mirror of the Labor Party of Britain, hatched in 1948 and vanished after GE1955. A chapter of LP also evolved in Malaya around that time. Britain's LP still exists, and is the current ruling party of the United Kingdom.
Liberal Socialist Party	A merger of two once-mainstream political parties - PP and DP - in the fifties to consolidate their position, but its political fortunes never improved, and faded out after GE1959.
Malayan Chinese Association	The Singapore chapter of MCA Malaya, it is defunct in Singapore today, but still exists as a component of the ruling Barisan Nasional in Malaysia. Now known as Malaysian Chinese Association.
Malayan Indian Congress	The now-defunct Singapore chapter of MIC Malaya. Presently, like MCA Malaysia, it is a member party of the ruling Barisan Nasional coalition, and known as Malaysian Indian Congress.
National Solidarity Party	Registered on 6 March 1987 by opposition veterans from different political parties, it clinched its first seat - an NCMP seat won by leader Steve Chia - in GE2001 under the combined SDA banner.
People's Action Party	Established in 21 November 1954, it started out as an umbrella of two left-wing factions - one led by PAP leader Lee Kuan Yew and the other by Lim Chin Siong. The latter group later broke away to form BS. The longest-surviving and undoubtedly the most dominant political party in Singapore's history, it formed the government in 1959 and is still the ruling party today, with a tally of 11

	<p>GE victories. Lee was Singapore's first Prime Minister from 1959 to 1990 until he was succeeded by Goh Chok Tong, who also took over Lee as PAP's leader in 1992. Lee's son Lee Hsien Loong succeeded Goh as Prime Minister and PAP leader in 2004.</p>
<p>People's Front, The</p>	<p>Registered on 21 May 1971 after a faction left BS, it contested GE1972 and GE1976 before disappearing into obscurity.</p>
<p>Pertubuhan Kebangsaan Melayu Singapura</p>	<p>"Singapore Malay National Organization" in Malay, it was the Singapore chapter of UMNO Malaya until Singapore's separation from Malaysia, and re-registered in its present name. Now a component of SDA, it still maintains links with UMNO Malaysia.</p>
<p>Pan-Malayan Islamic Party</p>	<p>Emerged in Singapore in 1957 after its Malayan counterpart in 1951 when religious members of UMNO Malaysia broke away. It re-registered on 6 August 1958 and later changed name to AIS while its Malaysian counterpart is today a strong opposition party known as Parti Islam SeMalaysia (PAS).</p>
<p>Progressive Party</p>	<p>Formed on 25 August 1947, it was the first political party that contested Singapore elections. One of the two mainstream parties in the early days (the other being DP), it was made up of English-speaking upper-class professionals and saw big names like Tan Chye Ching (C. C. Tan), John Laycock and David Marshall. It later merged with DP to form LSP.</p>
<p>Parti Pakyat</p>	<p>Now defunct in Singapore, its counterpart across the causeway, PR Malaya and later PR Malaysia founded on 11 November 1955 remained active as an opposition party until 2003 when it merged with Parti Keadilan Nasional to form Parti Keadilan Rakyat.</p>

Singapore Alliance	A united front made up of SPA, LSP, UMNO, MCA and MIC, affiliated to Malaya's then-ruling coalition, Alliance Malaysia.
Singapore Chinese Party	Formed in 1949 and re-registered on 26 September 1950, it was suspected to be a front of left-wing groups.
Singapore Congress	Headed by Felice Leon-Soh, this group contested only one by-election and never became a reckoned force.
Singapore Democratic Alliance	Registered on 3 July 2001, the newest political entity in the registers is an umbrella alliance consisting of SPP, NSP, SJP and PKMS, and is led by Chiam See Tong, the longest-serving and second opposition MP to be elected into Parliament in post-independence Singapore.
Singapore Democratic Party	Registered on 8 September 1980 by Chiam See Tong and Fok Tai Loy, it was once the strongest opposition party in post-independent Singapore and had a record of three seats in Parliament, the first opposition party to hold more than one seat since BS in 1963. Due to internal conflict, Chiam quit the party and it later lost all its seats. Now led by Dr Chee Soon Juan, whose confrontational style defers from that of his predecessors.
Singapore Justice Party	Registered on 10 August 1972, it is most well-known for persistently contesting Marine Parade GRC election after election from 1988 to 1992. Now a component of SDA.
Singapore Malay Union	Was briefly a coalition partner of Singapore's UMNO and MCA during GE1955, but went its own way and remained relatively weak before fading away.
Singapore People's Alliance	Formed just before GE1959 by then Chief Minister Lim Yew Hock, it was a revamped force of made up of LF and stalwarts from other parties to counter PAP's growing appeal.
Singapore People's Party	Registered on 21 November 1994, it is a breakaway

	<p>faction of SDP formed by some ex-SDP cadres after the conflict between ex-SDP leader Chiam See Tong and his party. Just before GE1997, Chiam left SDP to join SPP. When SDA was formed, SPP gave up its logo to SDA and adopted the present one.</p>
Singapore United Front	<p>Formerly known as UF. In 1988, it merged with WP, the hinderland party which it broke away from in 1973. BS also merged with WP at around the same time.</p>
United Democratic Party	<p>The Singapore chapter of UDP Malaya, which re-registered on 18 June 1962 under its Malay name "Parti Kesatuan Raayat". The Malaysia chapter, with Malaysia's LP and an MCA Malaysia breakaway group formed Parti Gerakan Rakyat (Gerakan), and is a radical member party of Malaysia's ruling coalition today.</p>
United Malays National Organization	<p>The Singapore counterpart of Malaysia's UMNO formed in 1946, the leading party in Alliance Malaysia and later Barisan Nasional coalition that provided all of Malaysia's Prime Ministers. Renamed PKMS after Singapore's independence.</p>
United Front	<p>Formed in 1973 from a breakaway faction of WP led by Seow Khee Leng, it was renamed SUF in 1984.</p>
United National Front	<p>Registered on 6 March 1970, it was once a forerunning opposition party in the sixties and seventies.</p>
United People's Front	<p>Registered on 20 March 1975 by some former UPP members, it appears to be the continuity of UPP.</p>
United People's Party	<p>Formed in 1961 by ex-PAP Cabinet Minister Ong Eng Guan after being expelled from PAP. Throughout its history, it has only won the Hong Lim seat. Ong resigned from his seat not long after GE1963, and the party disintegrated not longer after.</p>
Workers' Party, The	<p>Formed on 7 November 1957 by ex-LF leader David</p>



	<p>Marshall, it is the second longest-surviving and oldest opposition party today. From 1963, it went into a comatose until 1971 when a group of professionals led by J. B. Jeyaretnam revived it. Ten years later in 1981, Jeyaretnam broke PAP's monopoly in Parliament by winning the BE1981 to become the first elected opposition MP in 15 years. He served as MP until 1986 and remained as party chief until 2001. From then on, it was led by Low Thia Kiang, Singapore's second longest-serving opposition MP and the party's first ethnic Chinese majority leader.</p>
<p>Independent(s)</p>	<p>Election candidate(s) not affiliated to any political party. It was an alternative for solo political players, but has not been doing too well since the late sixties. Note that some independent candidates adopted a logo during their election campaign.</p>

Source : <http://www.singapore-elections.com/>

## Appendix 18

### Political Parties in the Philippines

Political Party	Notes
Green Party of the Philippines	Official name of the political party of the newly established Philippine Greens and of the environmentalist movement in the country. The grassroots-raised party, still young, was formally established during the 1990s with the goal of promoting an environmentalist agenda in the country that would benefit all sectors of society. The party has currently no members occupying any official positions but intends to build a ticket for the next congressional election. The party is also inviting many independents in Congress and in other local government positions to boost their numbers with the goal of making an environmentally friendly state by 2016. The party is a member of the Global Greens, a network of all the Green parties around the world.
LAKAS Christian-Muslim Democrats	This party also more popularly known as simply Lakas or LAKAS-CMD is the current ruling political party in the Philippines. LAKAS-CMD was formerly known as <i>LAKAS National Union of Christian Democrats– United Muslim Democrats of the Philippines</i> (LAKAS-NUCD-UMDP). It was formed for the 1992 Presidential elections as then General Fidel V. Ramos and Cebu Governor Emilio R. Osmena running for President and Vice President respectively. The current President of the Philippines, Gloria Macapagal-Arroyo is a member of the party as well as former president Fidel V. Ramos. It holds 86 seats of the 215 in the House of Representatives.
<i>Laban ng Makabayang Masang Pilipino</i> (Struggle of the Patriotic Filipino)	This party was the umbrella political coalition party of the opposition during the 1998 Philippine Presidential

	<p>Elections that lead to the presidency of then Vice President Joseph Estrada. It was the largest political on that time, uniting the major parties of Senator Edgardo Angara (LDP-Aurora)'s Laban ng Demokratikong Pilipino (Struggle of Democratic Filipinos), tycoon Eduardo Cojuangco's Nationalist People's Coalition and Vice President Joseph Estrada's Partido ng Masang Pilipino (Party of the Filipino Masses) along with minor and regional parties. Estrada's running mate, Senator Edgardo Angara lost to Senator Gloria Macapagal Arroyo (LAKAS-Pampanga). Joseph Estrada won against runner-up then House Speaker Jose de Venecia Jr. (LAKAS-Pangasinan) with 3.1 million pluralities and Estrada's coalition controls the both Houses of Congress and majority of elected positions locally.</p> <p>During the 2001 Midterm Legislative Elections, LAMMP was abolished and was replaced by a new coalition of Pro-Estrada legislators, named <i>Puwera ng Masa</i> (PnM)(Force of the Masses) lead by Estrada's wife, Luisa Ejercito Estrada.</p>
<p>Liberal Party (LP)</p>	<p>The Liberal Party (LP) is the oldest of the major political parties in the Philippines. The party was founded in 1946 when Manuel Roxas led the splinter liberal wing of the ruling <i>Nacionalista Party</i> (NP), under the new Liberal Party, to electoral victory. Over the next 20 years, leaders continually switched between the NP and LP. In addition, both Ramon Magsaysay and Ferdinand Marcos were LP members before defecting to the NP in successful bids for the presidency. Right after the 1986 EDSA Revolution, the liberal party under Senate President Jovito Salonga</p>

	<p>was able to consolidate in the post-Marcos era. The party also played a significant role in People Power II that toppled the corrupt regime of Joseph Estrada.</p>
<p>The <i>Nacionalista</i> Party (NP)</p>	<p>This Party is the oldest political party in the Philippines today responsible for leading the country throughout the majority of the 20th century since 1907. The party began as the country's vehicle for independence, through the building of a modern nation-state, and through the advocacy of efficient self rule. By the second half of the century the party was one of the main political contenders for leadership in the country, in competition with the Liberals and the Progressives, during the decades between the devastation of World War II and the violent suppression of partisan politics of the Marcos dictatorship. Eventually, the party was revived during the 1990's and is now being reborn by the likes of Sen. Richard Gordon, Sen. Ralph Recto, and party president Sen. Manuel Villar. Two of the other present parties, the Liberal Party and the Nationalist People's Coalition are breakaways from the <i>Nacionalista</i> Party.</p>
<p>Progressive Party of the Philippines</p>	<p>This party is a reformist political party that is considered to be the earliest form of a genuine <i>3rd force</i> party against the then dominant political pair of the Nacionalista Party and the Liberal Party. The party was founded in 1957, in response to the death of former president Ramon Magsaysay, by Manuel Manahan and Raul Manglapus. It was intended that the party pursue the goal of promoting reforms in policy and institution, and fighting graft and corruption that was alleged to be common in both the liberal and conservative members of the government in both the local and the national level.</p>

<p><i>Partindo ng Masang Pilipino</i>(Party of the Filipino Masses)</p>	<p>This was the political party of former Philippine President Joseph Estrada merged with other political parties to create <i>Laban ng Makabayang Masang Pilipino</i> or LAMMP (Struggle of the Patriotic Filipino Masses) in the 1998 Presidential Elections. PMP was Estrada's party when he ran for a Senate seat in 1987 and made a coalition with Nationalist People's Coalition party in 1992 when Estrada ran as Vice President under tycoon Eduardo Danding Cojuangco's ticket. Today, PMP occupies two Senate seat as a member of the Minority floor, occupied by Estrada's wife, Luisa Ejercito Estrada won in 2001 and his son, former San Juan suburb Mayor Jose Jinggoy Estrada won in 2004.</p>
<p>Lakas-National Union of Christian Democrats-United Muslim Democratic Party-<i>Kabalikat ng Malayang Pilipino</i> (Lakas-NUCD-UMDP-KAMPI)</p>	<p>The current ruling party is Lakas-NUCD-UMDP-KAMPI. The party was established in 1992 as a result of the merger of three political parties: the Partido Lakas Tao (Lakas), the National Union of Christian Democrats (NUCD), and the United Muslim Democrats of the Philippines (UMDP). <i>Kabalikat ng Malayang Pilipino</i> (KAMPI) joined Lakas-NUCD-UMDP in 1998. Since its establishment, the party has held the presidency twice. Of the four political parties that formed Lakas-NUCD-UMDPKAMPI, NUCD is the oldest. NUCD was established in 1984 as a political organization opposing the Marcos dictatorship and supporting Corazon Aquino in the 1986 elections. Lakas merged with NUCD. At about this time, a new movement, the United Muslim Democrats of the Philippines (UMDP), organized and joined Lakas-NUCD, bringing a key constituency to the party. Through this Lakas-NUCD-UMDP partnership, Ramos assumed the presidency</p>
<p><i>Laban ng Demokratikong</i></p>	<p>The <i>Laban ng Demokratikong Pilipino</i> Party was formed</p>

<i>Pilipino (LDP)</i>	in 1988 from the merger of two powerful political groupings both associated with President Corazon Aquino: <i>Lakas ng Bayan</i> (LAKAS), the coalition President Aquino supported in the May 1987 elections, and a splinter branch of Pilipino Democratic Party (PDP-LABAN), led by Representative Jose Cojuangco, Aquino's brother. The merger of these two groups resulted in electoral success.
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**Source :** <http://www.nationmaster.com/encyclopedia/>  
<http://www.cald.org/website/lpp.htm>



## Appendix 19

### Election offences in Indonesia According to Law No. 12 of 2003

#### (With Special Focus on Registration Stage)

Section	Substance	Description
137 (1) <sup>8</sup>	Any person who intentionally provides false information with regard to his/her identity or that of another person on a matter required for the completion of a voter registration form	False information
137 (2) <sup>9</sup>	Any person who intentionally causes another person to lose his/her right to vote and the person who loses his/her right to vote objects	Causes to lose rights
137 (3) <sup>10</sup>	Any person who intentionally forges a document , which is required by a provision in this Law for any action in the conduct of an election, with the intention of it being used by himself/herself or by any other person as a valid document or a document which has not been forged	Forges document
137 (4) <sup>11</sup>	Any person who, with the knowledge that a document as referred to in paragraph (3) is invalid or has been forged, intentionally uses or causes another person to use it as a valid document	Forges document
137(5) <sup>12</sup> .	Any person who at the time of voter registration, with undue force or by using a threat of violence, obstructs a person intending to register as a voter for the election in accordance with this law	obstruction

<sup>8</sup> shall be punishable by imprisonment for between 15 (fifteen) days and 3 (three) months, and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp. 1,000,000 (one million rupiah).

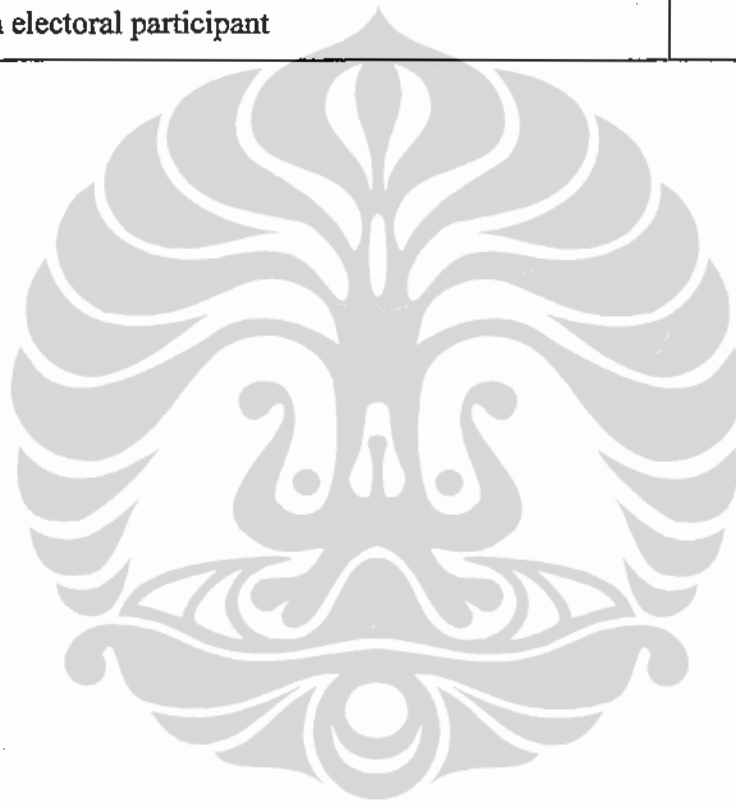
<sup>9</sup> shall be punishable by imprisonment for between 1 (one) month and 6 (six) months and/or a fine of between Rp. 200,000 (two hundred thousand rupiah) and Rp. 2,000,000 (two million rupiah).

<sup>10</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah).

<sup>11</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>12</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

137(6) <sup>13</sup> .	Any person who intentionally commits an act of fraud to mislead someone, or intimidates or promises a bribe to someone, with the intention of gaining support for the nomination of a candidate for election as a member of the DPD	Obstruction, intimidation, bribery
137(7) <sup>14</sup> .	Any person who intentionally provides false information, or uses a forged document as a valid original document, for matters required for the completion of the requirements for becoming an electoral participant	Other forms



<sup>13</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>14</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)



## Appendix 20

### Election offences in Indonesia According to Law No. 12 of 2003

#### With Special Focus on Campaign Stage

Section	Substance	Description
138 (1) <sup>15</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub-paragraph a	Obstruction, intimidation, other forms
138 (1) <sup>16</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 paragraph b,	Obstruction, intimidation, other forms
138 (1) <sup>17</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub paragraph c	Obstruction, intimidation, other forms
138 (1) <sup>18</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub paragraph d	Obstruction, intimidation, other forms
138 (1) <sup>19</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub paragraph e	Obstruction, intimidation, other forms
138 (2) <sup>20</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub paragraph f	intimidation, other forms

<sup>15</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>16</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>17</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>18</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>19</sup> shall be punishable by imprisonment for between 3 (three) months and 18 (eighteen) months and/or a fine of between Rp. 600,000 (six hundred thousand rupiah) and Rp 6,000,000 (six million rupiah)

<sup>20</sup> shall be punishable by imprisonment for between 1 (one) month and 6 (six) months and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp. 1,000,000 (one million rupiah).

138 (2) <sup>21</sup>	Any person who intentionally violates the rules on prohibitions of electoral campaign activities as stipulated in Section 74 sub paragraph g	intimidation, other forms
138 (3) <sup>22</sup>	Any person who intentionally conducts a campaign outside of the schedule determined by the KPU for each electoral participant, as stipulated in Section 71 paragraph (3)	Other forms
138 (4) <sup>23</sup>	Any person who intentionally disrupts, obstructs or disturbs the course of an election campaign	Obstruction
138 (5) <sup>24</sup>	Any person who makes or receives a contribution to campaign funds exceeding the specified limits as stipulated in Section 78 paragraph (2)	corruption
138 (6) <sup>25</sup>	Any person who intentionally makes or receives a contribution to campaign funds from or to prohibited parties as stipulated in Section 80 paragraph (1)	corruption
138 (7) <sup>26</sup>	Any person who intentionally gives false information in the Election Campaign Fund Report as required by this law	corruption

<sup>21</sup> shall be punishable by imprisonment for between 1 (one) month and 6 (six) months and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp. 1,000,000 (one million rupiah).

<sup>22</sup> shall be punishable by imprisonment for between 15 (fifteen) days and 3 (three) months and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp. 1,000,000 (one million rupiah).

<sup>23</sup> shall be punishable by imprisonment for between 1 (one) month and 6 (six) months and/or a fine of between Rp. 600.000,- (six hundred thousand rupiah) and Rp 6.000.000,- (six million rupiah)

<sup>24</sup> shall be punishable by imprisonment for between 4 (four) months and 24 (twenty four) months and/or a fine of between Rp. 200,000,000 (two hundred million rupiah) and Rp 1,000,000,000 (one billion rupiah)

<sup>25</sup> shall be punishable by imprisonment for between 4 (four) months and 24 (twenty four) months and/or a fine of between Rp. 200,000,000 (two hundred million rupiah) or maximum Rp 1,000,000,000 (one billion rupiah)

<sup>26</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

## Appendix 21

### Election offences in Indonesia According to Law No. 12 of 2003 With Special Focus on Voting Stage

Section	Substance	Description
139 (1) <sup>27</sup>	Any person who intentionally uses undue force or a threat of violence to obstruct a person intending to exercise his/her right to vote	Obstruction, intimidation
139 (2) <sup>28</sup>	Any person who, by providing or promising money or other materials with the intention to prevent that person from exercising his/her right to vote or to cause the said person to exercise his/her right to vote in a certain manner so that the ballot paper becomes invalid	Bribery
139 (3) <sup>29</sup>	Any person who intentionally participates in the election regulated under this Law by impersonating another person	personation
139 (4) <sup>30</sup>	Any person who votes more than the number of times stipulated in this law, at the same or different TPS	personation
139 (5) <sup>31</sup>	Any person who intentionally causes the election to fail	obstruction
139 (6) <sup>32</sup>	An employer/supervisor who does not provide an opportunity to an employee to exercise his/her right to vote, without providing	obstruction

<sup>27</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

<sup>28</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

<sup>29</sup> shall be punishable by imprisonment of between 15 (fifteen) days and 60 (sixty) days and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp 1,000,000 (one million rupiah)

<sup>30</sup> shall be punishable by imprisonment for between 1 (one) month and 4 (four) months and/or a fine of between Rp. 200,000 (two hundred thousand rupiah) and Rp 2,000,000 (two million rupiah)

<sup>31</sup> shall be punishable by imprisonment for between 6 (six) months and 3 (three) years and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

<sup>32</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

	a reason why the duty of the employee makes it impossible to do so	
139 (7) <sup>33</sup>	Any person who at the time of the election intentionally assists a voter other than a voter stipulated in Section 85 paragraph (1)	Other forms
139 (8) <sup>34</sup>	Any person who acts as an assistant to a voter stipulated by Section 85 paragraph (1), and intentionally discloses the choice of the voter to another person	Other forms



<sup>33</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

<sup>34</sup> shall be punishable by imprisonment for between 2 (two) months and 12 (twelve) months and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah)

## Appendix 22

### Election offences in Indonesia According to Law No. 12 of 2003

#### With Special Focus on Counting Stage/ Post-Voting Stage

Section	Substance	Description
140 (1) <sup>35</sup>	Any person who commits an act which causes a person's vote to be worthless or causes an electoral participant to receive additional or a reduced number of votes	corruption
140 (2) <sup>36</sup>	Any person who commits an act which causes a person's vote to be worthless or causes an electoral participant to receive additional or a reduced number of votes	corruption
140 (3) <sup>37</sup>	Any person who due to his/her negligence causes the destruction or loss of a sealed result of voting	corruption
140 (4) <sup>38</sup>	Any person who intentionally changes the result of the vote count and/or the Official Report and the Result of Vote Count Certificate	corruption

<sup>35</sup> shall be punishable by imprisonment for between 2 (two) months and 1 (one) year and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah).

<sup>36</sup> shall be punishable by imprisonment for between 2 (two) months and 1 (one) year and/or a fine of between Rp. 1,000,000 (one million rupiah) and Rp 10,000,000 (ten million rupiah).

<sup>37</sup> shall be punishable by imprisonment for between 15 (fifteen) days and 2 (two) months and/or a fine of between Rp. 100,000 (one hundred thousand rupiah) and Rp 1,000,000 (one million rupiah).

<sup>38</sup> shall be punishable by imprisonment for between 6 (six) months and 3 (three) years and/or a fine of between Rp. 100,000,000 (one hundred million rupiah) and Rp 1,000,000,000 (one billion rupiah).

### Appendix 23

#### Election Offences in Malaysia according to Election Offences Act 1954

##### Electoral Offences

Section	Substance	Description
3 (1) <sup>39</sup> (a)	knowingly makes any false statement on or in connection with any application to be placed on any register of electors	Offences by any person
3 (1) (b)	forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged	
3 (1) (c)	forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper	
3 (1) (d)	without due authority supplies any ballot paper to any person	
3 (1) (e)	sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person	
3 (1) (f)	not being a person entitled to be in possession of any ballot paper which has been marked with any authorized mark has any such ballot paper in his possession	
3 (1) (g)	puts into any ballot box anything other than the ballot paper which he is authorized by law to put in	
3 (1) (h)	without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station	
3 (1) (i)	without due authority destroys, takes, opens, or otherwise	

<sup>39</sup> The sanction for section 3 (1) a – o : imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction (Section 3 (1)).

	interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election	
3 (1) (j)	without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election	
3 (1) (k)	for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election	
3 (1) (l)	votes at any election when he is not entitled to vote thereat	
3 (1) (m)	prints any advertisement, hand-bill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or what purports to be a ballot paper, to be used or likely to be at such election	
3 (1) (n)	Obstructs or prevents a voter who is otherwise entitled to vote from voting at an election	
3 (1) (o)	Votes in an election at more than one polling station in the same constituency or a different constituency	
4 (a) <sup>40</sup>	makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true	Offences by election officers (An officer, clerk, interpreter or
4 (b)	permits any person whom he knows or has reasonable cause to	

<sup>40</sup> The sanction for section 4 (a) – (g) : imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any specific provisions to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction

	believe not to be a blind person or incapacitated person to vote in the manner provided for a blind persons or incapacitated persons, as the case may be	other person having any duty to perform pursuant to any written law relating to any election)
4 (c)	refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be	
4 (d)	willfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote	
4 (e)	willfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate on accordance with the provisions of such written law	
4 (f)	willfully counts any ballot paper as being cast for any candidate , which he knows or has reasonable cause to believe was not validly cast for such candidate	
4 (g)	is without reasonable cause guilty of any act or omission in breach of his duty	
(4 A) <sup>41</sup>	Any person who , before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, does any act or makes any statement with a view or with a tendency to promote feelings of ill-will, discontent or hostility between persons of the same race or different races or of the same class or different classes of the population of Malaysia in order to induce any elector or voter to vote or refrain from voting at an election or to procure or endeavor to procure the election of any person	Offences of promoting feelings of ill-will or hostility

<sup>41</sup> shall be liable, on conviction, to imprisonment for a term not exceeding five years or to fine not exceeding ten thousand ringgit or to both such imprisonment and fine.



5 (1) <sup>42</sup>	Every officer, clerk, interpreter, candidate, agent and any other person (hereinafter in this section referred to as an “authorized person”) authorized to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of thee votes, shall, before so attending make an oath of secrecy	Offences related maintenance of secrecy at election
5 (2)	Every officer, clerk, interpreter, candidate, agent an authorized person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station , and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may, in the discretion of the presiding officer, be divulged to a candidate or his agent or a police officer authorized to attend or on duty at the polling station.	Offences related maintenance of secrecy at election
5 (3)	No such officer, clerk, interpreter, candidate, agent, police officer or authorized person and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.	Offences related maintenance of secrecy at election

<sup>42</sup> Any person who contravene any provisions of section 5 (1) – 5 (6) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to affine not exceeding three thousand ringgit or to both such imprisonment and fine.

5 (4)	Every officer, clerk, interpreter, candidate, agent, police officer and authorized person, in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting , and shall not attempt to communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper	Offences related maintenance of secrecy at election
5 (5)	No person, except a presiding officer acting for a purpose authorized by any written law relating to any election or a person authorized by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box	Offences related maintenance of secrecy at election
5 (6)	<p>Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain, and aid in maintaining, the secrecy of the voting and shall not without lawful excuse-</p> <p>(a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper;</p> <p>(b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person;</p> <p>(c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or</p> <p>(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.</p>	Offences related maintenance of secrecy at election

## Appendix 24

### Election Offences in Malaysia according to Election Offences Act 1954

#### Corrupt Practices<sup>43</sup>

Section	Substance	Description
7	Every person who at an applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having noted once at any such election, applies at the same election for a ballot paper in his own name	Personation
8	Every person who corruptly by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, refreshment or provision , or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision.	Treating
9	Every person who directly or indirectly, by himself or by any other	Undue

<sup>43</sup> The sanction of corrupt practices : imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and , in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit.

	<p>person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right</p>	influence
10 (a)	<p>every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election</p>	Bribery
10 (b)	<p>every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavor to procure, any office, place, or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election</p>	Bribery

10 (c)	every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any elector or voter at any election	Bribery
10 (d)	every person who upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure, the election of any person, or the vote of any elector or voter at an election	Bribery
10 (e)	every person who advances or pays or causes to be paid any money to, or to the use, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election	Bribery
10 (f)	every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, give, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or vote to refraining or agreeing to refrain from voting at any such election	Bribery
10 (g)	every person who directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election	Bribery
10 (h)	every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any	Bribery

	candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment	
10 (i)	every person who directly or indirectly, by himself or by any other person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavor to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavor to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person	Bribery
11 (c)	prints, publishes, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher	Other forms of corrupt practices
11 (d)	makes or publishes, before or during any election, for purpose of affecting the return of any candidate, any false statement of fact in relating to the personal character of conduct of such candidate	
11 (e)	makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election	
11 (f)	being a candidate or election agent knowingly makes the declaration as to election expenses required by section 23 falsely	

**Appendix 25**  
**Election Offences according to Election Offences Act 1954**  
**Illegal Practices<sup>44</sup>**

Section	Substance	Description
15 (2)	A person who makes any payment, advance, or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid shall be guilty of an illegal practice	Illegal practices related to Payment of expenses through election agent
15 A (4)	Any person who incurs any expenses in contravention of this section, or who makes any declaration required by subsection (2) which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of an illegal practice	Prohibition of certain expenses
16 (2)	Every claims against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct of management of such election, which is not send in the election agent within the time limited by this Act, shall be barred and shall not be paid; and subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this section shall be guilty of an illegal practice	Period of sending in claims and making payments for election expenses
16 (4)	All expenses incurred by or on behalf of a candidate at an election which are incurred on account of in respect of the conduct or management of such election, shall be paid within the time limited by this Act; and, subject to such exception as may be allowed in	Period of sending in claims and making

<sup>44</sup> Every person who commits an illegal practice shall, on conviction by a Session Court, be liable to a fine of five thousand ringgit.

	pursuance of this Act, an election agent who makes a payment in contravention of this provision <i>shall be guilty of an illegal practice</i>	payments for election expenses
19 (2)	Any candidate or election agent who knowingly acts in contravention of this section <i>shall be guilty of an illegal practice</i>	Expenses in excess of maximum
20 (2)	Subject to such exception as ay be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also guilty of an illegal practice.	Illegal practices related to Certain expenditure
20 (3)	A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animals of transport of any kind whatsoever which he keeps or uses for the purpose of letting out of hire, and if he lets, lend, or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for conveyance of electors or voters to and from the poll he <i>shall be guilty of an illegal practice</i>	Illegal practices related to Certain expenditure
20 (4)	A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he does so he <i>shall be guilty of an illegal practice</i>	Illegal practices related to Certain expenditure



21 (2)	Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him <i>shall be guilty of an illegal practice</i>	Illegal practices related to Certain employment
23 (3) <sup>45</sup>	If the said return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate shall not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorized excuse for value to transmit the same as in this Act mentioned and if he sits or votes in contravention of this Act	Return and declaration respecting election expenses
23 (4)	If any candidate or election agent fails to comply with the requirements of subsection (1) or (2) he <i>shall be guilty of an illegal practice</i>	Return and declaration respecting election expenses
24 A (1) <sup>46</sup>	No person shall, on nomination day or days : (a) furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in anyway or used in or upon any vessel, animal, motor car, truck or other vehicle; or (b) use himself or use in upon any vessel, animal, motor, car, truck or other vehicle any such musical instrument of loud speaker as, or for the purpose of, political propaganda	Limitation of political propaganda on nomination day
24 A (2) <sup>47</sup>	No person shall , on nomination day or days, wait or loiter within	Limitation of

<sup>45</sup> Penalty : one thousand ringgit for every day on which he so sits or votes

<sup>46</sup> Imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine

<sup>47</sup> Imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine

	a distance of fifty meters from the limit of any place of nomination	political propaganda on nomination day
24B (3) <sup>48</sup>	A candidate or his election agent may, during the, campaign period – (a) hold, convene or organize any open rally, open public display or open public entertainment ; or (b) give any open public address or open public lecture, in the constituency in which the candidate seeks election but only if he holds a permit to do so issued to him by the police officer in charge of the district where the meeting, rally , display or entertainment is to be held or the address or lecture is to be given	Limitation on election campaign
24 B (4) <sup>49</sup>	A candidate or his election agent may, during the campaign period, display , furnish or distribute election campaign materials to members of the public in the constituency in which the candidate seeks election but only if he – (a) holds a permit to, do so issued to him by the State Election Officer, subject to such terms and conditions as the State Election Officer may determine; and (b) has paid to the State Election Officer a deposit of five thousand ringgit in the case of an election to the <i>Dewan Rakyat</i> and three thousand ringgit in the case of an election to a Legislative Assembly	Limitation on election campaign
24 B (7) <sup>50</sup>	Nor person shall, during the campaign period, display or affix any election campaign material within a distance of fifty meters from	Limitation on election

<sup>48</sup> Imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine

<sup>49</sup> Imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine

<sup>50</sup> Imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine

	the limit of any polling station	campaign
25 (3) <sup>51</sup>	Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in this section provided	Offences related to employer
26 (1) a <sup>52</sup>	No person shall on polling day – hold, convene or organize in any place any form of meeting, rally, display or entertainment or give any form of address or lecture whether or not such meeting, rally, display, entertainment, address or lecture is open to or involves members of the public or otherwise	Offences related to Limitation on polling day
26 (1) b	No person shall, on polling day - furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in anyway or used in or upon any vessel, animal, motor car, truck or other vehicle as , or for the purpose of political propaganda or use himself or use in upon any vessel, animal, motorcar, truck or other vehicle any such musical instrument or loud speaker	Offences related to Limitation on polling day
26 (1) c	No person shall, on polling day – open or establish or maintain an office or a booth within the constituency in which a candidate seeks election for any purpose connected with an election other than the offices opened or establish or maintained pursuant to section 24B (2) or committee-room hired pursuant to section 14 (1) (b)	Offences related to Limitation on polling day
26 (1) d	No person shall, on polling day – use any dwelling house, shop house, hut, hall or any premises as an office or a centre of any political party in the constituency	Offences related to Limitation on

<sup>51</sup> Shall on summary conviction be liable to a fine of five thousand ringgit or to imprisonment for one year

<sup>52</sup> Any person who contravenes any of the provisions of subsection (1) shall be liable , on conviction , to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine.

		polling day
26 (1) e	Within a distance of fifty meters from the limits of any polling station – (i) endeavoring to establish the identity of any person entering a polling station ; (ii) check on any list the name of any person entering or leaving a polling station; (iii) solicit or persuade or attempt to persuade any person to abstain from voting for any candidate at the election; ((iv) wait or loiter except for the purpose of gaining entry to the polling station to cast his vote	Offences related to Limitation on polling day
26 (1) f	No person shall, on polling day – on behalf of any candidate , canvass for the votes of elector in any constituency for or against any candidate or political party at an election by whatever means including visiting electors at their homes or places of work or interviewing members of the public	Offences related to Limitation on polling day

## Appendix 26

### Election Offences in Singapore According to the Parliamentary Elections Act (Offences related to Registration of Electors and Declarations by Voters)

Section	Substance	Description
21(1) <sup>53</sup>	Every person who willfully makes a false statement or declaration in any claim or objection or at any inquiry held in connection therewith or in any appeal	Offences related to Registration of Electors
21(3) <sup>54</sup>	Every person who in the course of that consideration or hearing knowingly swears anything material to the validity of the claim, objection or appeal which is false	
21A (4) <sup>55</sup>	Any person who knowingly contravenes subsection (1) or (2) <sup>56</sup>	
44 (4) <sup>57</sup>	If any person willfully makes a false statement in any such declaration,	Declarations by voters

<sup>53</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100.

<sup>54</sup> shall be guilty of the offence of giving false evidence and shall be liable on conviction to the punishment provided therefor in the Penal Code (Cap. 224).

<sup>55</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or to both.

<sup>56</sup> Any candidate or his election agent who or any political party which, on payment of any fee, acquires from the Registration Officer any copy (whether in printed or electronic form) of any register of electors —  
21A (1) (a) shall use any information recorded in the register only for communicating with electors;  
(b) shall not use any information recorded in the register for commercial purposes; and  
(c) may disclose any information recorded in the register to others only after obtaining their written acknowledgment that they are bound by the restrictions in this subsection.

(2) Subject to subsection (3), no person who obtains any information recorded in any register of electors shall reproduce, store or transmit any part of the information by electronic or any other means for any purpose.

<sup>57</sup> he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months.

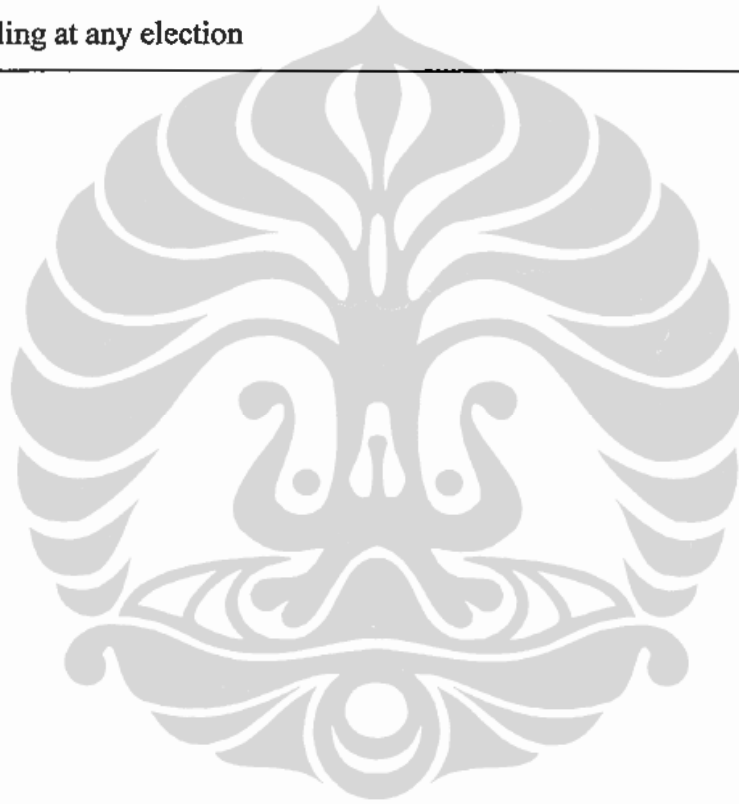
**Appendix 27**

**Election Offences in Singapore according to the Parliamentary Elections Act  
Offences <sup>58</sup>**

<b>Section</b>	<b>Substance</b>
55 (1) (a)	Every person who --- forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the Returning Officer any nomination paper knowing it to be forged;
55 (1) (b)	forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
55 (1) (c)	without due authority supplies any ballot paper to any person
55 (1) (d)	sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person
55 (1) (e)	not being a person entitled under this Act to be in possession of any ballot paper which has been marked with the official mark in accordance with this Act, has any such ballot paper in his possession
55 (1) (f)	puts into any ballot box anything other than the ballot paper which he is authorized by law to put in
55 (1) (g)	without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station
55 (1) (h)	without due authority destroys, takes, opens, or otherwise interferes with any ballot box , packet of ballot papers or any DRE voting machine or direct recording electronic voting equipment approved under section 50B (2) in use

<sup>58</sup> shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years and shall, on conviction, become incapable for a period of 7 years from the date of his conviction of being registered as an elector or of voting at any election under this Act or of being elected as the President or a Member of Parliament, and if at that date he has been elected a Member of Parliament, his election or appointment shall be vacated from the date of the conviction.

	or intended to be used for the purposes of an election
55 (1) (i)	without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election
55 (1) (j)	manufactures, constructs, imports into Singapore, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, imported into Singapore, supplied or used for the purpose of any election, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election



## Appendix 28

### Election Offences in Singapore according to the Parliamentary Elections Act (Election Offences related to Maintenance of Secrecy) <sup>59</sup>

Section	Substance
56 (3)	Subject to subsection (3A), every officer, clerk, interpreter, candidate and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in the station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark.
56 (4)	No such officer, clerk, interpreter, candidate or agent, and no person shall — (a) attempt to obtain in the polling station information as to the candidate or group of candidates, for whom any voter in the station is about to vote or has voted (b) communicate at any time to any person any information obtained in a polling station as to the candidate or group of candidates, for whom any voter in the station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at the station.
56 (5)	Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not — (a) attempt to ascertain at the counting the number on the back of any ballot paper; or (b) communicate any information obtained at the counting as to the candidate or group of candidates, for whom any vote is given by any particular ballot paper.
56 (6)	No person, except a presiding officer acting for a purpose authorized by this

<sup>59</sup> Every person who acts in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months



Act or a person authorized by the presiding officer and acting for that purpose, shall communicate or attempt to communicate with any voter after the voter has received a ballot paper and before he has placed it in a ballot box, or after the voter has been authorized to use an approved DRE voting machine to mark or record his vote and before he marks or records his vote at the machine, as the case may be.



**Appendix 29**

**Election Offences in Singapore according to the Parliamentary Elections Act  
Corrupt Practices<sup>60</sup>**

Section	Substance	Description
57(1) (a)	at an election applies for a ballot paper or to record his vote at a DRE voting machine in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person	shall be guilty of the offence of personation
57(1) (b)	having voted once at any such election, applies at the same election for a ballot paper or to record his vote at a DRE voting machine in his own name	shall be guilty of the offence of personation
58(1)	<p>A person corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving, any meat, drink, refreshment, cigarette, entertainment or other provision or thing or any money or ticket or other means or device to enable the procuring of any such meat, drink, refreshment, cigarette, entertainment or other provision or thing, to or for any person —</p> <p>(a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting;</p> <p>(b) for the purpose of inducing that person to attend or remain at any election meeting;</p> <p>(c) on account of any such person or any other person having</p>	shall be guilty of treating

<sup>60</sup> shall be guilty of a corrupt practice and shall on conviction by a District Court be liable —  
 (i) in the case referred to in paragraph (a), to a fine of not less than \$250 and not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both; and  
 (ii) in any other case, to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.

	voted or refrained from voting or being about to vote or refrain from voting at the election; or (d) on account of any such person having attended an election meeting.	
59(a)	directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting at any election	shall be guilty of the offence of undue influence
59 (b)	by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces or prevails upon any elector or voter either to vote or refrain from voting at any election,	shall be guilty of the offence of undue influence
60 (a)	every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act on account of that elector or voter having voted or refrained from voting at any election under this Act;	Bribery
60(b)	every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavor to procure, any office, place or employment to or for any elector or voter or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce that elector or voter to	

	vote or refrain from voting, or corruptly does any such act on account of that elector or voter having voted or refrained from voting at any election under this Act;
60(c)	every person who, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement referred to in paragraph (a) or (b) to or for any person in order to induce that person to procure or endeavor to procure the return of any person as a Member of Parliament, or the vote of any elector or voter at any election under this Act;
60(d)	every person who, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement to or for any person who is assisting or has promised to assist a candidate at an election to induce that person to refrain from assisting that candidate;
60(e)	every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement procures or engages, promises or endeavors to procure, the return of any person as a Member of Parliament, or the vote of any elector or voter at an election under this Act;
60(f)	every person who — (i) advances or pays or causes to be paid any money to or to the use of any other person with the intent that the money or any part thereof shall be expended in bribery at any election under this Act; or (ii) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;
60(g)	every elector or voter who, before or during any election under this Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift,

	loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;	
60(h)	every person who, after any election under this Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;	
60(i)	every person who, directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate or group of candidates, at an election, or on account of and as payment for his having assisted or agreed to assist any candidate or group of candidates, at an election, applies to that candidate or to any candidate in that group, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment;	
60(j)	every person who, directly or indirectly, by himself or by any other person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavor to procure any office, place or employment to or for that other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavor to procure any money or valuable consideration to or for any person or to or for that other person, or	bribery

	to or for any person on behalf of that other person.	
61(c)	<p>publishes or causes to be published any election advertising during the period beginning with the day the writ of election is issued for an election and ending on the eve of polling day at the election which —</p> <p>(i) in the case of election advertising that is, or is contained in, a printed document, does not bear on its face or, if there is more than one side of printed matter, on the first or last page of the document, the names and addresses of its printer, its publisher and the person for whom or at whose direction the election advertising is published; or</p> <p>(ii) in the case of any other election advertising , does not bear in the form and manner prescribed under section 78A the names and addresses of its publisher and the person for whom or at whose direction the election advertising is published;</p>	Other forms of corrupt practices
61(d)	makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of the candidate;	Other forms of corrupt practices
61(e)	makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at the election;	Other forms of corrupt practices
61(f)	being a candidate or election agent, knowingly makes the declaration as to election expenses required by section 74 falsely	Other forms of corrupt practices

### Appendix 30

#### Election Offences in Singapore according to the Parliamentary Elections Act

#### Illegal Practices<sup>61</sup>

Section	Substance	Description
65 (3)	A person who makes any payment, advance or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid shall be guilty of an illegal practice.	Payment of expenses through election agent
66 (2A)	Subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of subsection (2) shall be guilty of an illegal practice.	Period for sending in claims and making payments for election expenses
66 (4A)	Subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of subsection (4) shall be guilty of an illegal practice.	Period for sending in claims and making payments for election expenses
69 (2)	Any candidate or election agent who knowingly acts in contravention of this section <sup>62</sup> shall be guilty of an illegal practice.	Expenses in excess of maximum to be illegal practice

<sup>61</sup> 79 (1) Every person who commits an illegal practice shall be guilty of an offence and shall be liable on conviction by a District Court to a fine not exceeding \$300 and become incapable for a period of 3 years from the date of his conviction of being registered as an elector or of voting at any election under this Act or of being elected as the President or a Member of Parliament, and if at that date he has been elected a Member of Parliament, his election shall be vacated from the date of the conviction.

<sup>62</sup> 69 (1) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent, whether before, during, or after an election, on account of or in respect of the conduct or management of the election, in excess of the amount determined in accordance with the Third Schedule.

(1A) There shall not be included in the amount specified in subsection (1) any expenditure incurred by the candidate for his personal expenses, nor the fee, if any, paid to the election agent not exceeding \$500.

71(1A)	A person knowingly acting in contravention of subsection (1) <sup>63</sup> shall be guilty of an illegal practice except that a candidate shall not be liable nor shall his election be avoided for an illegal practice under this subsection committed without his consent or connivance by any person other than his election agent.	Use of motor vehicles at elections
71 (5) <sup>64</sup>	Any person who contravenes subsection (4) <sup>65</sup>	Use of motor vehicles at elections
72 (2)	Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during or after an election, the person engaging or employing him shall be guilty of an illegal practice.	Certain employment to be illegal
74 (3A) <sup>66</sup>	If a candidate sits or votes in contravention of this Act	Return and declaration respecting election expenses
74 (4) <sup>67</sup>	If any candidate or election agent fails to comply with	Return and

<sup>63</sup> 71(1) Subject to this section, a person shall not either let, lend, employ, hire, borrow or use any motor vehicle for the purpose of conveyance of electors or voters to or from the poll.

<sup>64</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100.

<sup>65</sup> 71(4) Between 8 a.m. and 8 p.m. on polling day, no person shall park a motor vehicle within 100 metres of any polling station other than a motor vehicle used for the conveyance of any sick, infirm or disabled person for such time as is reasonably necessary to enable the person to cast his vote.

<sup>66</sup> he shall be guilty of an offence and shall be liable on conviction to a penalty of \$500 for every day on which he so sits or votes.

<sup>67</sup> he shall be guilty of an illegal practice and the provisions of this section shall be in addition to and not in derogation of section 61.



	the requirements of subsection (1) <sup>68</sup> or (2) <sup>69</sup> ,	declaration respecting election expenses
76 (3) <sup>70</sup>	Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ of a reasonable period for voting	Employers to allow employees reasonable period for voting
77 (4) <sup>71</sup>	Any person who contravenes subsection (1) <sup>72</sup>	Badges, symbols, etc., prohibited on polling day
78 (4) <sup>73</sup>	Any person who commits an offence under such regulations <sup>74</sup>	Regulations for display of posters

<sup>68</sup> 74(1) Within 31 days after the date of publication of the result of an election in the *Gazette*, the election agent of every candidate at that election shall transmit to the Returning Officer a true return (referred to in this Act as the return respecting election expenses), in Form 19 in the First Schedule, containing detailed statements as respects that candidate of —

- (a) all payments made by the election agent together with all the bills and receipts referred to in section 66 (1), which bills and receipts are in this Act included in the expression “return respecting election expenses” and the dates of payment of all sums for which no receipt is attached;
- (b) the amount of personal expenses, if any, paid by the candidate;
- (c) the disputed claims so far as the election agent is aware;
- (d) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;
- (e) all moneys, securities and other valuable considerations received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom the sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise.

<sup>69</sup> 74(2) The return respecting election expenses shall be signed by the election agent and shall be accompanied by a statement made by the candidate and his election agent which shall be respectively in Forms 20 and 21 in the First Schedule and shall be on oath before a Justice of the Peace or a commissioner for oaths.

<sup>70</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months.

<sup>71</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months.

<sup>72</sup> 77(1) No badge, symbol, rosette, favour, set of colours, flag, advertisement, handbill, placard or poster or any replica of a voting paper shall be worn, used, carried or displayed by any person or on any motorcar, truck or other vehicle as political propaganda on polling day.

<sup>73</sup> shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months.

<sup>74</sup> 78(1) The Minister may make regulations to regulate the display of posters and banners in respect of an election.

		and banners
78A (2) <sup>75</sup>	Any person who contravenes any regulations made under subsection (1) (b) <sup>76</sup>	Regulations for other election advertising
78B (3) <sup>77</sup>	Any person who contravenes subsection (1) <sup>78</sup>	Election advertising ban on polling day
78C (2) <sup>79</sup>	Any person who contravenes subsection (1) <sup>80</sup>	Blackout period for election survey results
78D (2) <sup>81</sup>	Any person who contravenes subsection (1) <sup>82</sup>	Exit polls ban on polling day
80 (2) <sup>83</sup>	Any person who contravenes subsection (1) <sup>84</sup>	Prohibition of

(2) Such regulations may provide for the Returning Officer to determine the number and size of posters and banners which may be displayed in any electoral division and for the determination of the places at which they may be so displayed.

(3) For the purposes of this section and any regulations made thereunder —

"banner" includes a flag, bunting, ensign or standard;

"poster" includes any label, set of colours, drawing, painting, advertisement, handbill or placard or any replica of a voting paper or of the symbol of any political party.

<sup>75</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

<sup>76</sup> 78A (1) The Minister may make regulations —(b) regulating election advertisement and the publication thereof during an election period on what is commonly known as the Internet by political parties, candidates or their election agents and relevant persons, including prescribing the features that must or must not appear or be used in any such election advertisement .

<sup>77</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

<sup>78</sup> 78B (1) Subject to subsection (2), no person shall on polling day display or publish, or cause or permit to be displayed or published, any election advertising in or among any electors in any electoral division before the close of all the polling stations in the electoral division .

<sup>79</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

<sup>80</sup> 78C (1) No person shall publish or permit or cause to be published the results of any election survey during the period beginning with the day the writ of election is issued for an election and ending with the close of all polling stations on polling day at the election.

<sup>81</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

<sup>82</sup> 78D (1) No person shall publish or permit or cause to be published on polling day before the close of all polling stations on polling day :

(a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted; or

(b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.

<sup>83</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months.

		canvassing on polling day
81 (2) <sup>85</sup>	Any person who contravenes subsection (1) <sup>86</sup>	Prohibition of dissuasion from voting




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<sup>84</sup> 80 (1) No person shall on polling day :

(a) by word, message, writing or in any other manner endeavour to persuade any person to give or dissuade any person from giving his vote at an election; or

(b) visit an elector at his home or place of work for any purpose in connection with an election.

<sup>85</sup> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months.

<sup>86</sup> 81 (1) No person shall between the day of nomination and polling day (both days being inclusive) at any election, by word, message, writing or in any other manner dissuade or attempt to dissuade any person from giving his vote at the election.

## Appendix 31

### Election Offences according to Omnibus Election Code of the Philippines

Section	Substance	Description
261(a)	<p>(1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.</p> <p>(2) Any person, association, corporation, group or community who solicits or receives, directly or indirectly, any expenditure or promise of any office or employment, public or private, for any of the foregoing considerations.</p>	Vote-buying and vote-selling
261(b)	Two or more persons, whether candidates or not, who come to an agreement concerning the commission of any violation of paragraph (a) of this section and decide to commit it.	Conspiracy to bribe voters
261(c)	Any person who bets or wagers upon the outcome of, or any contingency connected with an election. Any money or thing of value or deposit of money or thing of value situated anywhere in the Philippines put as such bet or wager shall be forfeited to the government.	Wagering upon result of election
261(d)	(1) Any public officer, or any officer of any public or private	Coercion of

	<p>corporation or association, or any head, superior, or administrator of any religious organization, or any employer or land-owner who coerces or intimidates or compels, or in any manner influence, directly or indirectly, any of his subordinates or members or parishioners or employees or house helpers, tenants, overseers, farm helpers, tillers, or lease holders to aid, campaign or vote for or against any candidate or any aspirant for the nomination or selection of candidates.</p> <p>(2) Any public officer or any officer of any commercial, industrial, agricultural, economic or social enterprise or public or private corporation or association, or any head, superior or administrator of any religious organization, or any employer or landowner who dismisses or threatens to dismiss, punishes or threatens to punish by reducing his salary, wage or compensation, or by demotion, transfer, suspension, separation, excommunication, ejection, or causing him annoyance in the performance of his job or in his membership, any subordinate member or affiliate, parishioner, employee or house helper, tenant, overseer, farm helper, tiller, or lease holder, for disobeying or not complying with any of the acts ordered by the former to aid, campaign or vote for or against any candidate, or any aspirant for the nomination or selection of candidates</p>	subordinates
261(e)	<p>Any person who, directly or indirectly, threatens, intimidates or actually causes, inflicts or produces any violence, injury, punishment, damage, loss or disadvantage upon any person or persons or that of the immediate members of his family, his honor or property, or uses any fraudulent device or scheme to compel or induce the registration or refraining from registration of any voter, or the participation in a campaign or refraining or desistance from any campaign, or the casting of any vote or omission to vote, or any promise of such registration, campaign, vote, or omission therefrom.</p>	Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion

261(f)	Any person who, directly or indirectly, threatens, intimidates, terrorizes or coerces any election official or employee in the performance of his election functions or duties.	Coercion of election officials and employees
261(g)	<p>During the period of forty-five days before a regular election and thirty days before a special election,</p> <p>(1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.<sup>87</sup></p> <p>(2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.</p>	Appointment of new employees, creation of new position, promotion, or giving salary increases
261(h)	Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.	Transfer of officers and employees in the civil service
261(i)	Any officer or employee in the civil service, except those holding	Intervention of

<sup>87</sup> As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

	political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, <i>barangay</i> self-defense units and all other paramilitary units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.	public officers and employees
261(j)	It is unlawful for any person to promise any office or employment, public or private, or to make or offer to make an expenditure, directly or indirectly, or to cause an expenditure to be made to any person, association, corporation or entity, which may induce anyone or the public in general either to vote or withhold his vote, or to vote for or against any candidate in any election or any aspirant for the nomination or selection of an official candidate in a convention of a political party. It is likewise unlawful for any person, association, corporation or community, to solicit or receive, directly or indirectly, any expenditure or promise or any office, or employment, public or private, for any of the foregoing considerations.	Undue influence
261(k)	It is unlawful to solicit votes or undertake any propaganda on the day of registration before the board of election inspectors and on the day of election, for or against any candidate or any political party within the polling place and with a radius of thirty meters thereof.	Unlawful electioneering
261(l)	No employee or laborer shall be dismissed, nor a tenant be ejected from his landholdings for refusing or failing to vote for any candidate of his employer or landowner. Any employee, laborer or tenant so dismissed or ejected shall be reinstated and the salary or wage of the employee or laborer, or the share of the harvest of the tenant, shall be restored to the aggrieved party upon application to the proper court.	Prohibition against dismissal of employees, laborers, or tenants
261(m)	During the campaign period, on the day before and on election day, any appointing authority who appoints or any person who utilizes the services of special policemen, special agents, confidential agents or	Appointment or use of special

	persons performing similar functions; persons previously appointed as special policemen, special agents, confidential agents or persons performing similar functions who continue acting as such, and those who fail to turn over their firearms, uniforms, insignias and other badges of authority to the proper officer who issued the same <sup>88</sup> .	policemen, special agents, confidential agents or the like
261(n)	The Director of the Bureau of Prisons, any provincial warden, the keeper of the jail or the person or persons required by law to keep prisoners in their custody who illegally orders or allows any prisoner detained in the national penitentiary, or the provincial, city or municipal jail to leave the premises thereof sixty days before and thirty days after the election. The municipal or city warden, the provincial warden, the keeper of the jail or the person or persons required by law to keep prisoners in their custody shall post in three conspicuous public places a list of the prisoners or detention prisoners under their care. Detention prisoners must be categorized as such.	Illegal release of prisoners before and after election
261(o)	Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the Government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any	Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election

<sup>88</sup> At the start of the aforementioned period, the *barangay* chairman, municipal mayor, city mayor, provincial governor, or any appointing authority shall submit to the Commission a complete list of all special policemen, special agents, confidential agents or persons performing similar functions in the employ of their respective political subdivisions, with such particulars as the Commission may require.



	election campaign or for any partisan political activity.	campaign
261(p)	Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the polling place, voting, counting of votes, or preparation of the election returns. However, in cases of affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.	Deadly weapons
261(q)	Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.  This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.	Carrying firearms outside residence or place of business
261(r)	Any person who uses during the campaign period, on the day before and on election day, any armored land, water or air craft, provided with any temporary or permanent equipment or any other device or contraption for the mounting or installation of cannons, machine guns and other similar high caliber firearms, including military type tanks, half trucks, scout trucks, armored trucks, of any make or model, whether new, reconditioned, rebuilt or remodelled: Provided, That banking or financial institutions and all business firms may use not more than two armored vehicles strictly for, and limited to, the purpose of transporting cash, gold bullion or other valuables in connection with their business from and to their place of business, upon previous authority of the Commission.	Use of armored land, water or air craft

261(s)	<p>During the campaign period, on the day before and on election day, any member of security or police organization of government agencies, commissions, councils, bureaus, offices, or government-owned or controlled corporations, or privately-owned or operated security, investigative, protective or intelligence agencies, who wears his uniform or uses his insignia, decorations or regalia, or bears arms outside the immediate vicinity of his place of work: Provided, That this prohibition shall not apply when said member is in pursuit of a person who has committed or is committing a crime in the premises he is guarding; or when escorting or providing security for the transport of payrolls, deposits, or other valuables; or when guarding the residence of private persons or when guarding private residences, buildings or offices: Provided, further, That in the last case prior written approval of the Commission shall be obtained. The Commission shall decide all applications for authority under this paragraph within fifteen days from the date of the filing of such application.</p> <p>During the same period, and ending thirty days thereafter any member of the Armed Forces of the Philippines, special, forces, home defense forces, <i>barangay</i> self-defense units and all other paramilitary units that now exist or which may hereafter be organized who wears his uniform or bears arms outside the camp, garrison or barracks to which he is assigned or detailed or outside their homes, in case of members of para-military units, unless (1) the President of the Philippines shall have given previous authority therefore, and the Commission notified thereof in writing, or (2) the Commission authorizes him to do so, which authority it shall give only when necessary to assist it in maintaining free, orderly and honest elections, and only after notice and hearing. All personnel of the Armed Forces authorized by the President or the Commission to bear</p>	Wearing of uniforms and bearing arms
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	<p>arms or wear their uniforms outside their camps and all police and peace officers shall bear their true name, rank and serial number, if any, stitched in block letters on a white background on the left breast of their uniform, in letters and numbers of a clearly legible design at least two centimeters tall, which shall at all times remain <i>substanceble</i> and uncovered.</p> <p>During the election period, whenever the Commission finds it necessary for the promotion of free, orderly, honest and peaceful elections in a specific area, it shall confiscate or order the confiscation of firearms of any member or members of the Armed Forces of the Philippines, police forces, home defense forces, barangay self-defense units, and all other para-military units that now exist, or which may hereafter be organized, or any member or members of the security or police organization, government ministries, commissions, councils, bureaus, offices, instrumentalities, or government-owned or controlled corporations and other subsidiaries, or of any member or members of privately owned or operated security, investigative, protective or intelligence agencies performing identical or similar functions.</p>	
261(t)	<p>During the campaign period, on the day before and on election day, any member of the city or municipal police force, any provincial or sub-provincial guard, any member of the Armed Forces of the Philippines, special forces, home defense forces, <i>barangay</i> self-defense units and all other para-military units that now exist or which may hereafter be organized who acts as bodyguard or security guard of any public official, candidate or any other person, and any of the latter who utilizes the services of the former as bodyguard or security guard: Provided, That, after due notice and hearing, when the life and security of a candidate is in jeopardy, the Commission is empowered to assign at the candidate's choice, any member of the Philippine</p>	<p>Policemen and provincial guards acting as bodyguards or security guards</p>

	<p>Constabulary or the police force of any municipality within the province to act as his bodyguard or security guard in a number to be determined by the Commission but not to exceed three per candidate: Provided, however, That when the circumstances require immediate action, the Commission may issue a temporary order allowing the assignment of any member of the Philippine Constabulary or the local police force to act as bodyguard or security guard of the candidate, subject to confirmation or revocation.</p>	
261(u)	<p>Any person who organizes or maintains a reaction force, strike force or similar force during the election period.</p> <p>The heads of all reaction forces, strike forces, or similar forces shall, not later than forty-five days before the election, submit to the Commission a complete list of all members thereof with such particulars as the Commission may require.</p>	<p>Organization or maintenance of reaction forces, strike forces, or other similar forces</p>
261(v)	<p>Any public official or employee including <i>barangay</i> officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:</p> <p>(1) Any and all kinds of public works, except the following:</p> <p>(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;</p>	<p>Prohibition against release, disbursement or expenditure of public funds</p>

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other

	<p>office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and</p> <p>(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.</p>	
261(w)	<p>During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.</p>	<p>Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices</p>
261(x)	<p>The provisions of law to the contrary notwithstanding during the</p>	<p>Suspension of</p>

election period, any public official who suspends, without prior approval of the Commission, any elective provincial, city, municipal or <i>barangay</i> officer, unless said suspension will be for purposes of applying the "Anti-Graft and Corrupt Practices Act" in relation to the suspension and removal of elective officials; in which case the provisions of this section shall be inapplicable.	elective provincial, city, municipal or <i>barangay</i> officer
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## Appendix 32

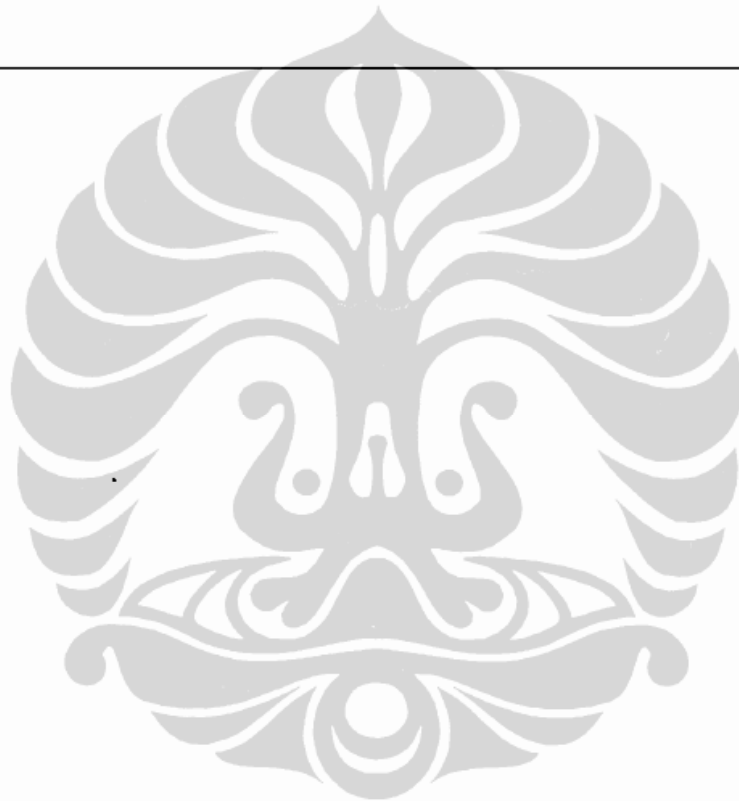
### Election Offences according to Omnibus Election Code of the Philippines (Election offences Related to Registration of Voters)

Section	Substance
261(y) (1)	Any person who, having all the qualifications and none of the disqualifications of a voter, fails without justifiable excuse to register as a voter in an election, plebiscite or referendum in which he is qualified to vote.
261(y) (2)	Any person who knowingly makes any false or untruthful statement relative to any of the data or information required in the application for registration.
261(y) (3)	Any person who deliberately imprints or causes the imprinting of blurred or indistinct fingerprints on any of the copies of the application for registration or on the voter's affidavit; or any person in charge of the registration of voters who deliberately or through negligence, causes or allows the imprinting of blurred or indistinct fingerprints on any of the aforementioned registration forms, or any person who tampers with the fingerprints in said registration records.
261(y) (4)	Any member of the board of election inspectors who approves any application which on its face shows that the applicant does not possess all the qualifications prescribed by law for a voter; or who disapproves any application which on its face shows that the applicant possesses all such qualifications.
261(y) (5)	Any person who, being a registered voter, registers anew without filing an application for cancellation of his previous registration.
261(y) (6)	Any person who registers in substitution for another whether with or without the latter's knowledge or consent.
261(y) (7)	Any person who tampers with or changes without authority any data or entry in any voter's application for registration.
261(y) (8)	Any person who delays, hinders or obstructs another from registering.



261(y) (9)	Any person who falsely certifies or identifies another as a bona fide resident of a particular place or locality for the purpose of securing the latter's registration as a voter.
261(y) (10)	Any person who uses the voter's affidavit of another for the purpose of voting, whether or not he actually succeeds in voting.
261(y) (11)	Any person who places, inserts or otherwise includes, as approved application for registration in the book of voters or in the provincial or national central files of registered voters, the application of any fictitious voter or any application that has not been approved; or removes from, or otherwise takes out of the book of voters or the provincial or national central files of registered voters any duly approved voter's application, except upon lawful order of the Commission, or of a competent court or after proper cancellation as provided in Sections 122, 123, 124 and 125 hereof.
261(y) (12)	Any person who transfers or causes the transfer of the registration record of a voter to the book of voters of another polling place, unless said transfer was due to a change of address of the voter and the voter was duly notified of his new polling place.
261(y) (13)	Any person who asks, demands, takes, accepts or possesses, directly or indirectly, the voter's affidavit of another, in order to induce the latter to withhold his vote, or to vote for or against any candidate in an election or any issue in a plebiscite or referendum. It shall be presumed prima facie that the asking, demanding, taking, accepting, or possessing is with such intent if done within the period beginning ten days before election day and ending ten days after election day, unless the voter's affidavit of another and the latter are both members of the same family.
261(y) (14)	Any person who delivers, hands over, entrusts, gives, directly or indirectly his voter's affidavit to another in consideration of money or other benefit or promises thereof, or takes or accepts such voter's affidavit directly or indirectly, by giving or causing the giving of money or other benefit or making or causing the making of a promise thereof.

261(y) (15)	Any person who alters in any manner, tears, defaces, removes or destroys any certified list of voters.
261(y) (16)	Any person who takes, carries or possesses any blank or unused registration form already issued to a city or municipality outside of said city or municipality except as otherwise provided in this Code or when directed by express order of the court or of the Commission.
261(y) (17)	Any person who maliciously omits, tampers or transfers to another list the name of a registered voter from the official list of voters posted outside the polling place.



### Appendix 33

#### Election Offences according to Omnibus Election Code of the Philippines

##### (Election offences Related to Voting)

Section	Substance
261(z) (1)	Any person who fails to cast his vote without justifiable excuse.
261(z) (2)	Any person who votes more than once in the same election, or who, not being a registered voter, votes in an election.
261(z) (3)	Any person who votes in substitution for another whether with or without the latter's knowledge and/or consent.
261(z) (4)	Any person who, not being illiterate or physically disabled, allows his ballot to be prepared by another, or any person who prepares the ballot of another who is not illiterate or physically disabled, with or without the latter's knowledge and/or consent.
261(z) (5)	Any person who avails himself of any means of scheme to discover the contents of the ballot of a voter who is preparing or casting his vote or who has just voted.
261(z) (6)	Any voter who, in the course of voting, uses a ballot other than the one given by the board of election inspectors or has in his possession more than one official ballot.
261(z) (7)	Any person who places under arrest or detains a voter without lawful cause, or molests him in such a manner as to obstruct or prevent him from going to the polling place to cast his vote or from returning home after casting his vote, or to compel him to reveal how he voted.
261(z) (8)	Any member of the board of election inspectors charged with the duty of reading the ballot during the counting of votes who deliberately omits to read the vote duly written on the ballot, or misreads the vote actually written thereon or reads the name of a candidate where no name is written on the ballot.
261(z) (9)	Any member of the board of election inspectors charged with the duty of tallying the votes in the tally board or sheet, election returns or other

	prescribed form who deliberately fails to record a vote therein or records erroneously the votes as read, or records a vote where no such vote has been read by the chairman.
261(z) (10)	Any member of a board of election inspectors who has made possible the casting of more votes than there are registered voters.
261(z) (11)	Any person who, for the purpose of disrupting or obstructing the election process or causing confusion among the voters, propagates false and alarming reports or information or transmits or circulates false orders, directives or messages regarding any matter relating to the printing of official ballots, the postponement of the election, the transfer of polling place or the general conduct of the election.
261(z) (12)	Any person who, without legal authority, destroys, substitutes or takes away from the possession of those having legal custody thereof, or from the place where they are legally deposited, any election form or document or ballot box which contains official ballots or other documents used in the election.
261(z) (13)	Any person having legal custody of the ballot box containing the official ballots used in the election who opens or destroys said box or removes or destroys its contents without or against the order of the Commission or who, through his negligence, enables any person to commit any of the aforementioned acts, or takes away said ballot box from his custody.
261(z) (14)	Any member of the board of election inspectors who knowingly uses ballots other than the official ballots, except in those cases where the use of emergency ballots is authorized.
261(z) (15)	Any public official who neglects or fails to properly preserve or account for any ballot box, documents and forms received by him and kept under his custody.
261(z) (16)	Any person who reveals the contents of the ballot of an illiterate or disabled voter whom he assisted in preparing a ballot.
261(z) (17)	Any person who, without authority, transfers the location of a polling place.

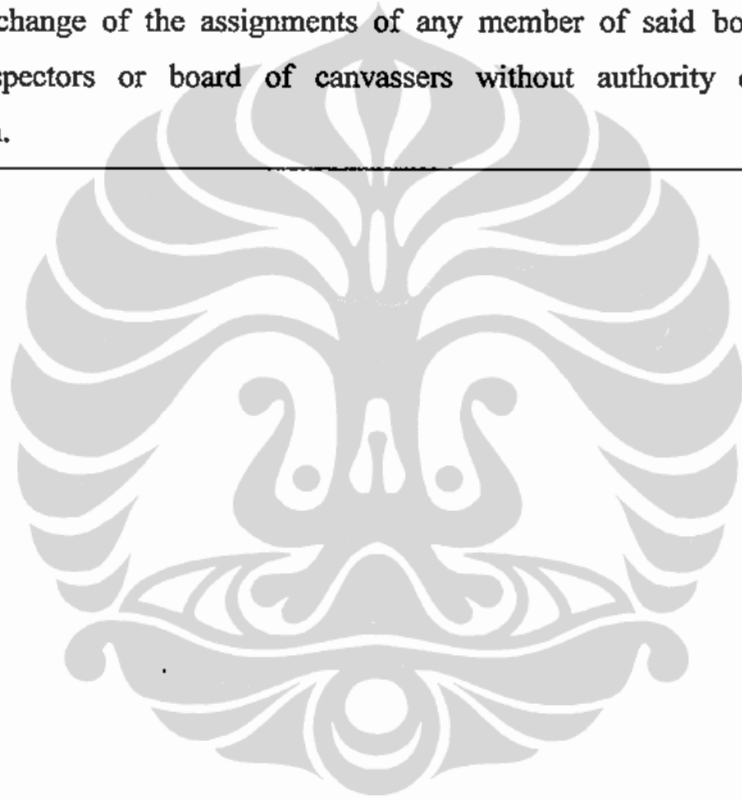
261(z) (18)	Any person who, without authority, prints or causes the printing of any ballot or election returns that appears as official ballots or election returns or who distributes or causes the same to be distributed for use in the election, whether or not they are actually used.
261(z) (19)	Any person who, without authority, keeps, uses or carries out or causes to be kept, used or carried out, any official ballot or election returns or printed proof thereof, type-form mould, electro-type printing plates and any other plate, numbering machines and other printing paraphernalia being used in connection with the printing of official ballots or election returns.
261(z) (20)	Any official or employee of any printing establishment or of the Commission or any member of the committee in charge of the printing of official ballots or election returns who causes official ballots or election returns to be printed in quantities exceeding those authorized by the Commission or who distributes, delivers, or in any manner disposes of or causes to be distributed, delivered, or disposed of, any official ballot or election returns to any person or persons not authorized by law or by the Commission to receive or keep official ballots or election returns or who sends or causes them to be sent to any place not designated by law or by the Commission.
261(z) (21)	Any person who, through any act, means or device, violates the integrity of any official ballot or election returns before or after they are used in the election.
261(z) (22)	Any person who removes, tears, defaces or destroys any certified list of candidates posted inside the voting booths during the hours of voting.
261(z) (23)	Any person who holds or causes the holding of an election on any other day than that fixed by law or by the Commission, or stops any election being legally held.
261(z) (24)	Any person who deliberately blurs his fingerprint in the voting record.

## Appendix 34

### Election Offences according to Omnibus Election Code of the Philippines (Election Offences related to Canvassing)

Section	Substance
261(aa) (1)	Any chairman of the board of canvassers who fails to give due notice of the date, time and place of the meeting of said board to the candidates, political parties and/or members of the board.
261(aa) (2)	Any member of the board of canvassers who proceeds with the canvass of the votes and/or proclamation of any candidate which was suspended or annulled by the Commission.
261(aa) (3)	Any member of the board of canvassers who proceeds with the canvass of votes and/or proclamation of any candidate in the absence of quorum, or without giving due notice of the date, time and place of the meeting of the board to the candidates, political parties, and/or other members of the board.
261(aa) (4)	Any member of the board of canvassers who, without authority of the Commission, uses in the canvass of votes and/or proclamation of any candidate any document other than the official copy of the election returns.
261(bb) (1)	Any member of any board of election inspectors or board of canvassers who deliberately absents himself from the meetings of said body for the purpose of obstructing or delaying the performance of its duties or functions.
261(bb) (2)	Any member of any board of election inspectors or board of canvassers who, without justifiable reason, refuses to sign and certify any election form required by this Code or prescribed by the Commission although he was present during the meeting of the said body.
261(bb) (3)	Any person who, being ineligible for appointment as member of any board of election inspectors or board of canvassers, accepts an appointment to said body, assumes office, and actually serves as a member thereof, or any of public officer or any person acting in his behalf who appoints such

	ineligible person knowing him to be ineligible.
261(bb) (4)	Any person who, in the presence or within the hearing of any board of election inspectors or board of canvassers during any of its meetings, conducts himself in such a disorderly manner as to interrupt or disrupt the work or proceedings to the end of preventing said body from performing its functions, either partly or totally.
261(bb) (5)	Any public official or person acting in his behalf who relieves any member of any board of election inspectors or board of canvassers or who changes or causes the change of the assignments of any member of said board of election inspectors or board of canvassers without authority of the Commission.



## Appendix 35

### Election Offences according to Omnibus Election Code of the Philippines (Election Offences related to Candidacy and Campaign)

Section	Substance
261(cc) (1)	Any political party which holds political conventions or meetings to nominate its official candidates earlier than the period fixed in this Code.
261(cc) (2)	Any person who abstracts, destroys or cancels any certificate of candidacy duly filed and which has not been cancelled upon order of the Commission.
261(cc) (3)	Any person who misleads the board of election inspectors by submitting any false or spurious certificate of candidacy or document to the prejudice of a candidate.
261(cc) (4)	Any person who, being authorized to receive certificates of candidacy, receives any certificate of candidacy outside the period for filing the same and makes it appear that said certificate of candidacy was filed on time; or any person who, by means of fraud, threat, intimidation, terrorism or coercion, causes or compels the commission of said act.
261(cc) (5)	Any person who, by any device or means, jams, obstructs or interferes with a radio or television broadcast of any lawful political program.
261(cc) (6)	Any person who solicits votes or undertakes any propaganda, on the day of election, for or against any candidate or any political party within the polling place or within a radius of thirty meters thereof.



### Appendix 36

#### Election Offences according to Omnibus Election Code of the Philippines (Other Prohibitions)

Section	Substance
261(dd) (1)	Any person who sells, furnishes, offers, buys, serves or takes intoxicating liquor on the days fixed by law for the registration of voters in the polling place, or on the day before the election or on election day: Provided, That hotels and other establishments duly certified by the Ministry of Tourism as tourist oriented and habitually in the business of catering to foreign tourists may be exempted for justifiable reasons upon prior authority of the Commission: Provided, further, That foreign tourists taking intoxicating liquor in said authorized hotels or establishments are exempted from the provisions of this subparagraph.
261(dd) (2)	Any person who opens in any polling place or within a radius of thirty meters thereof on election day and during the counting of votes, booths or stalls of any kind for the sale, dispensing or display of wares, merchandise or refreshments, whether solid or liquid, or for any other purposes.
261(dd) (3)	Any person who holds on election day, fairs, cockfights, boxing, horse races, jai-alai or any other similar sports.
261(dd) (4)	Refusal to carry election mail matter - Any operator or employee of a public utility or transportation company operating under a certificate of public convenience, including government-owned or controlled postal service or its employees or deputized agents who refuse to carry official election mail matters free of charge during the election period. In addition to the penalty prescribed herein, such refusal shall constitute a ground for cancellation or revocation of certificate of public convenience or franchise.
261(dd) (5)	Prohibition against discrimination in the sale of air time - Any person who operates a radio or television station who without justifiable cause discriminates against any political party, coalition or aggroupment of

parties or any candidate in the sale of air time. In addition to the penalty prescribed herein, such refusal shall constitute a ground for cancellation or revocation of the franchise.



## Appendix 37

### Election Offences according to Omnibus Election Code of the Philippines (Other Election Offenses)

**Sec. 262. Other election offenses** - Violation of the provisions, or pertinent portions, of the following sections of this Code shall constitute election offenses: Sections 9, 18, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 122, 123, 127, 128, 129, 132, 134, 135, 145, 148, 150, 152, 172, 173, 174, 178, 180, 182, 184, 185, 186, 189, 190, 191, 192, 194, 195, 196, 197, 198, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 223, 229, 230, 231, 233, 234, 235, 236, 239 and 240.

Section	Substance
9	<p>Official mail and telegram relative to elections - Papers connected with the election and required by this Code to be sent by public officers in the performance of their election duties shall be free of postage and sent by registered special delivery mail. Telegrams of the same nature shall likewise be transmitted free of charge by government telecommunications and similar facilities.</p> <p>It shall be the duty of the Postmaster General, the Director of the Bureau of Telecommunications, and the managers of private telecommunication companies to transmit immediately and in preference to all other communications or telegrams messages reporting election results and such other messages or communications which the Commission may require or may be necessary to ensure free, honest and orderly elections.</p>
18	<p>Preservation of ballot boxes, their keys, and disposition of their contents - Until after the completion by the <i>Batasang Pambansa</i> of the canvassing of the votes and until an uncontested proclamation of the President-elect and Vice-President-elect shall have been obtained, the provincial, city or district board of canvassers under the joint responsibility with the provincial, city or municipal treasurers shall provide for the safekeeping and storage of the ballot boxes in a safe and closed chamber secured by four padlocks: one to be provided by the corresponding board chairman; one by the provincial or city treasurer concerned; and one each by the ruling party and the accredited dominant opposition political</p>

	party.
74	<p>Contents of certificate of candidacy - The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the <i>Batasang Pambansa</i>, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.</p> <p>Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his <i>Hadji</i> name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.</p> <p>The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.</p>
75	Filing and distribution of certificate of candidacy - The certificate of candidacy shall be filed on any day from the commencement of the election period but not

	<p>later than the day before the beginning of the campaign period: Provided, That in cases of postponement or failure of election under Sections 5 and 6 hereof, no additional certificate of candidacy shall be accepted except in cases of substitution of candidates as provided under Section 77 hereof.</p> <p>The certificates of candidacy for President and Vice-President of the Philippines shall be filed in ten legible copies with the Commission which shall order the printing of copies thereof for distribution to all polling places. The certificates of candidacy for the other offices shall be filed in duplicate with the offices herein below mentioned, together with a number of clearly legible copies equal to twice the number of polling places in the province, city, district, municipality or <i>barangay</i>, as the case may be:</p> <p>(a) For representative in the <i>Batasang Pambansa</i>, with the Commission, the provincial election supervisor, city election registrar in case of highly urbanized cities, or an officer designated by the Commission having jurisdiction over the province, city or representative district who shall send copies thereof to all polling places in the province, city or district;</p> <p>(b) For provincial offices, with the provincial election supervisor of the province concerned who shall send copies thereof to all polling places in the province;</p> <p>(c) For city and municipal offices, with the city or municipal election registrar who shall send copies thereof to all polling places in the city or municipality; and</p> <p>(d) For <i>punong barangay</i> or <i>kagawad ng sangguniang barangay</i>, the certificates of candidacy shall be filed in accordance with the provisions of Section 39 of Section VI of this Code.</p> <p>The duly authorized receiving officer shall immediately send the original copy of all certificates of candidacy received by him to the Commission.</p>
76	<p>Ministerial duty of receiving and acknowledging receipt - The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.</p>
80	<p>Election campaign or partisan political activity outside campaign period - It shall</p>

	<p>be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period: Provided, That political parties may hold political conventions or meetings to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election.</p>
81	<p>Intervention of foreigners - It shall be unlawful for any foreigner, whether judicial or natural person, to aid any candidate or political party, directly or indirectly, or take part in or influence in any manner any election, or to contribute or make any expenditure in connection with any election campaign or partisan political activity.</p>
82	<p>Lawful election propaganda - Lawful election propaganda shall include:</p> <p>(a) Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;</p> <p>(b) Handwritten or printed letters urging voters to vote for or against any particular candidate;</p> <p>(c) Cloth, paper or cardboard posters, whether framed or posted, with an area exceeding two feet by three feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size, shall be allowed: Provided, That said streamers may not be displayed except one week before the date of the meeting or rally and that it shall be removed within seventy-two hours after said meeting or rally; or</p> <p>(d) All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission's authorization shall be published in two newspapers of general circulation throughout the nation for at least twice within one week after the authorization has been granted.</p>
83	<p>Removal, destruction or defacement of lawful election propaganda prohibited - It</p>

	shall be unlawful for any person during the campaign period to remove, destroy, obliterate, or in any manner deface or tamper with, or prevent the distribution of lawful election propaganda.
84	Requirements for published or printed election propaganda - Any newspaper, newsletter, newsweekly, gazette or magazine advertising , posters, pamphlets, circulars, handbills, bumper stickers, streamers, simple list of candidates or any published or printed political matter for or against a candidate or group of candidates to any public office shall bear and be identified by the words "paid for by" followed by the true and correct name and address of the payor and by the words "printed by" followed by the true and correct name and address of the printer.
85	<p>Prohibited forms of election propaganda - It shall be unlawful:</p> <p>(a) To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging voters to vote for or against any candidate unless they bear the names and addresses of the printer and payor as required in Section 84 hereof;</p> <p>(b) To erect, put up, make use of, attach, float or display any billboard, tinplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party;</p> <p>(c) To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandanas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate;</p> <p>(d) To show or display publicly any advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts which may be allowed as hereinafter provided; and</p> <p>(e) For any radio broadcasting or television station to sell or give free of charge air time for campaign and other political purposes except as authorized in this Code under the rules and regulations promulgated by the Commission pursuant thereto.</p> <p>Any prohibited election propaganda gadget or advertisement shall be stopped,</p>

	confiscated or torn down by the representative of the Commission upon specific authority of the Commission.
86	Regulation of election propaganda through mass media- (a) The Commission shall promulgate rules and regulations regarding the sale of air time for partisan political purposes during the campaign period to insure the equal time as to duration and quality... b) All contracts for advertising in any newspaper, magazine, periodical or any form of publication promoting or opposing the candidacy of any person for public office shall, before its implementation, be registered by said newspaper, magazine, periodical or publication with the Commission. (c) No franchise or permit to operate a radio or television station shall be granted or issued, suspended or cancelled during the election period.
87	Rallies, meetings and other political activities - Subject to the requirements of local ordinances on the issuance of permits, any political party supporting official candidates or any candidate individually or jointly with other aspirants may hold peaceful political rallies, meetings, and other similar activities during the campaign period: Provided, That all applications for permits to hold meetings, rallies and other similar political activities, receipt of which must be acknowledged in writing and which application shall be immediately posted in a conspicuous place in the city or municipal building, shall be acted upon in writing by local authorities concerned within three days after the filing thereof and any application not acted upon within said period shall be deemed approved: and Provided, further, That denial of any application for said permit shall be appealable to the provincial election supervisor or to the Commission whose decision shall be made within forty-eight hours and which shall be final and executory: Provided, finally, That one only justifiable ground for denial is a prior written application by any candidate or political party for the same purpose has been approved.
88	Public rally - Any political party or candidate shall notify the election registrar concerned of any public rally said political party or candidate intends to organize and hold in the city or municipality, and within seven working days thereafter submit to the election registrar a statement of expenses incurred in



89	<p>Transportation, food and drinks - It shall be unlawful for any candidate, political party, organization, or any person to give or accept, free of charge, directly or indirectly, transportation, food or drinks or things of value during the five hours before and after a public meeting, on the day preceding the election, and on the day of the election; or to give or contribute, directly or indirectly, money or things of value for such purpose.</p>
95	<p>Prohibited contributions - No contribution for purposes of partisan political activity shall be made directly or indirectly by any of the following:</p> <ul style="list-style-type: none"> <li>(a) Public or private financial institutions: Provided, however, That nothing herein shall prevent the making of any loan to a candidate or political party by any such public or private financial institutions legally in the business of lending money, and that the loan is made in accordance with laws and regulations and in the ordinary course of business;</li> <li>(b) Natural and juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation;</li> <li>(c) Natural and juridical persons who hold contracts or sub-contracts to supply the government or any of its division, subdivision or instrumentalities, with goods or services or to perform construction or other works;</li> <li>(d) Natural and juridical persons who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government or any of its division, subdivision or instrumentalities, including government-owned or controlled corporations;</li> <li>(e) Natural and juridical persons who, within one year prior to the date of the election, have been granted loans or other accommodations in excess of P100,000 by the government or any of its division, subdivision or instrumentalities including government-owned or controlled corporations;</li> <li>(f) Educational institutions which have received grants of public funds amounting to no less than P100,000.00;</li> <li>(g) Officials or employees in the Civil Service, or members of the Armed Forces of the Philippines; and</li> <li>(h) Foreigners and foreign corporations.</li> </ul>

	It shall be unlawful for any person to solicit or receive any contribution from any of the persons or entities enumerated herein.
96	Soliciting or receiving contributions from foreign sources - It shall be unlawful for any person, including a political party or public or private entity to solicit or receive, directly or indirectly, any aid or contribution of whatever form or nature from any foreign national, government or entity for the purposes of influencing the results of the election.
97	Prohibited raising of funds - It shall be unlawful for any person to hold dances, lotteries, cockfights, games, boxing bouts, bingo, beauty contests, entertainments, or cinematographic, theatrical or other performances for the purpose of raising funds for an election campaign or for the support of any candidate from the commencement of the election period up to and including election day; or for any person or organization, whether civic or religious, directly or indirectly, to solicit and/or accept from any candidate for public office, or from his campaign manager, agent or representative, or any person acting in their behalf, any gift, food, transportation, contribution or donation in cash or in kind from the commencement of the election period up to and including election day; Provided, That normal and customary religious stipends, tithes, or collections on Sundays and/or other designated collection days, are excluded from this prohibition.
98	True name of contributor required. - No person shall make any contribution in any name except his own nor shall any candidate or treasurer of a political party receive a contribution or enter or record the same in any name other than that of the person by whom it was actually made.
99	Report of contributions - Every person giving contributions to any candidate, treasurer of the party, or authorized representative of such candidate or treasurer shall, not later than thirty days after the day of the election, file with the Commission a report under oath stating the amount of each contribution, the name of the candidate, agent of the candidate or political party receiving the contribution, and the date of the contribution.
100	Limitations upon expenses of candidates - No candidate shall spend for his

	<p>election campaign an aggregate amount exceeding one peso and fifty centavos for every voter currently registered in the constituency where he filed his candidacy: Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.</p>
101	<p>Limitations upon expenses of political parties - A duly accredited political party may spend for the election of its candidates in the constituency or constituencies where it has official candidates an aggregate amount not exceeding the equivalent of one peso and fifty centavos for every voter currently registered therein. Expenses incurred by branches, chapters, or committees of such political party shall be included in the computation of the total expenditures of the political party.</p>
102	<p>Lawful expenditures - To carry out the objectives of the preceding sections, no candidate or treasurer of a political party shall, directly or indirectly, make any expenditure except for the following purposes:</p> <ul style="list-style-type: none"> <li>(a) For travelling expenses of the candidates and campaign personnel in the course of the campaign and for personal expenses incident thereto;</li> <li>(b) For compensation of campaigners, clerks, stenographers, messengers, and other persons actually employed in the campaign;</li> <li>(c) For telegraph and telephone tolls, postage, freight and express delivery charges;</li> <li>(d) For stationery, printing and distribution of printed matters relative to candidacy;</li> <li>(e) For employment of watchers at the polls;</li> <li>(f) For rent, maintenance and furnishing of campaign headquarters, office or</li> </ul>

	<p>place of meetings;</p> <p>(g) For political meetings and rallies and the use of sound systems, lights and decorations during said meetings and rallies;</p> <p>(h) For newspaper, radio, television and other public advertisements;</p> <p>(i) For employment of counsel, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Section 100 and 101 hereof;</p> <p>(j) For copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists the costs of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof; or</p> <p>(k) For printing sample ballots in such color, size and maximum number as may be authorized by the Commission and the cost of such printing shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof.</p>
103	<p>Persons authorized to incur election expenditures - No person, except the candidate, the treasurer of a political party or any person authorized by such candidate or treasurer, shall make any expenditure in support of or in opposition to any candidate or political party. Expenditures duly authorized by the candidate or the treasurer of the party shall be considered as expenditures of such candidate or political party.</p>
104	<p>Prohibited donations by candidates, treasurers of parties or their agents - No candidate, his or her spouse or any relative within the second civil degree of consanguinity or affinity, or his campaign manager, agent or representative shall during the campaign period, on the day before and on the day of the election, directly or indirectly, make any donation, contribution or gift in cash or in kind, or undertake or contribute to the construction or repair of roads, bridges, school buses, <i>puericulture</i> centers, medical clinics and hospitals, churches or chapels cement pavements, or any structure for public use or for the use of any religious or civic organization: Provided, That normal and customary religious dues or contributions, such as religious stipends, tithes or collections on Sundays or other</p>

	<p>designated collection days, as well as periodic payments for legitimate scholarships established and school contributions habitually made before the prohibited period, are excluded from the prohibition.</p> <p>The same prohibition applies to treasurers, agents or representatives of any political party.</p>
105	<p>Accounting by agents of candidate or treasurer - Every person receiving contributions or incurring expenditures by authority of the candidate or treasurer of the party shall, on demand by the candidate or treasurer of the party and in any event within five days after receiving such contribution or incurring such expenditure, render to the candidate or the treasurer of the party concerned, a detailed account thereof with proper vouchers or official receipts.</p>
106	<p>Records of contributions and expenditures - (a) It shall be the duty of every candidate, treasurer of the political party and person acting under the authority of such candidate or treasurer to issue a receipt for every contribution received and to obtain and keep a receipt stating the particulars of every expenditure made.</p> <p>(b) Every candidate and treasurer of the party shall keep detailed, full, and accurate records of all contributions received and expenditures incurred by him and by those acting under his authority, setting forth therein all information required to be reported.</p> <p>(c) Every candidate and treasurer of the party shall be responsible for the preservation of the records of contributions and expenditures, together with all pertinent documents, for at least three years after the holding of the election to which they pertain and for their production for inspection by the Commission or its duly authorized representative, or upon presentation of a <i>subpoena duces tecum</i> duly issued by the Commission. Failure of the candidate or treasurer to preserve such records or documents shall be deemed prima facie evidence of violation of the provisions of this Section.</p>
107	<p>Statement of contributions and expenditures - Every candidate and treasurer of the political party shall, not later than seven days, or earlier than ten days before the day of the election, file in duplicate with the office indicated in the following section, full, true and itemized, statement of all contributions and expenditures in</p>

	<p>connection with the election.</p> <p>Within thirty days after the day of the election, said candidate and treasurer shall also file in duplicate a supplemental statement of all contribution and expenditures not included in the statement filed prior to the day of the election.</p>
108	<p>Place for filing statements - The statements of contributions and expenditures shall be filed as follows:</p> <p>(a) Those of candidates for President and Vice-President, with the Commission.</p> <p>(b) Those of candidates for Members of the <i>Batasang Pambansa</i>, with the provincial election supervisor concerned, except those of candidates in the National Capital Region which shall be filed with the regional election director of said region.</p> <p>(c) Those of candidates for provincial offices, with the provincial election supervisor concerned.</p> <p>(d) Those of candidates for city, municipal and <i>barangay</i> offices, with the election registrar concerned.</p> <p>If the statement is sent by mail, it shall be by registered mail, and the date on which it was registered with the post office may be considered as the filing date thereof if confirmed on the same date by telegram or radiogram addressed to the office or official with whom the statement should be filed.</p> <p>The provincial election supervisors and election registrars concerned shall, within fifteen days after the last day for the filing of the statements, send to the Commission duplicate copies of all statements filed with them.</p>
109	<p>Form and contents of statement - The statement shall be in writing, subscribed and sworn to by the candidate or by the treasurer of the party, shall be complete as of the date next preceding the date of filing and shall set forth in detail (a) the amount of contribution, the date of receipt, and the full name and exact address of the person from whom the contribution was received; (b) the amount of every expenditure, the date thereof, the full name and exact address of the person to whom payment was made, and the purpose of the expenditure; (c) any unpaid obligation, its nature and amount, and to whom said obligation is owing; and (d) such other particulars which the Commission may require.</p>

	<p>If the candidate or treasurer of the party has received no contribution, made no expenditure, or has no pending obligation, the statement shall reflect such fact.</p>
110	<p>Preservation and inspection of statements - All statements of contributions and expenditures shall be kept and preserved at the office where they are filed and shall constitute part of the public records thereof for three years after the election to which they pertain. They shall not be removed therefrom except upon order of the Commission or of a competent court and shall, during regular office hours, be subject and open to inspection by the public. The officer in-charge thereof, shall, on demand, furnish certified copies of any statement upon payment of the fee prescribed under Section 270 hereof.</p> <p>It shall be the duty of the Commission to examine all statements of contributions and expenditures of candidates and political parties to determine compliance with the provisions of this Section.</p>
111	<p>Effect of failure to file statement - In addition to other sanctions provided in this Code, no person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures herein required.</p> <p>The same prohibition shall apply if the political party which nominated the winning candidate fails to file the statements required herein within the period prescribed by this Code.</p>
112	<p>Report of contractor and business firms - Every person or firm to whom any electoral expenditure is made shall, within thirty days after the day of the election, file with the Commission a report setting forth the full names and exact addresses of the candidates, treasurers of political parties, and other persons incurring such expenditures, the nature or purpose of each expenditure, the date and costs thereof, and such other particulars as the Commission may require. The report shall be signed and sworn to by the supplier or contractor, or in case of a business firm or association, by its president or general manager.</p> <p>It shall be the duty of such person or firm to whom an electoral expenditure is made to require every agent of a candidate or of the treasurer of a political party to present written authority to incur electoral expenditures in behalf of such</p>

	<p>candidate or treasurer, and to keep and preserve at its place of business, subject to inspection by the Commission or its authorized representatives, copies of such written authority, contracts, vouchers, invoices and other records and documents relative to said expenditures for a period of three years after the date of the election to which they pertain.</p> <p>It shall be unlawful for any supplier, contractor or business firm to enter into contract involving election expenditures with representatives of candidates or political parties without such written authority.</p>
113	<p>Permanent List of Voters - Any provision of Presidential Decree No. 1896 to the contrary notwithstanding, the list of voters prepared and used in the election of Members of the <i>Batasang Pambansa</i> on May 14, 1984, with such additions, cancellations and corrections as may hereafter be made in accordance with the provisions of this Code, shall constitute the permanent list of voters in each city or municipality, as the case may be, until 1996.</p> <p>For purposes of the next following election, the Commission, through the election registrars, shall assign the proper precincts and polling places to the registered voters in said list. Written notice of any such change shall be made to the affected voters within two weeks therefrom.</p>
114	<p>Renewal of the Permanent List - The list of voters prepared in accordance with the preceding section shall be renewed in nineteen hundred and ninety-six and every twelve years thereafter.</p>
115	<p>Necessity of Registration - In order that a qualified elector may vote in any election, plebiscite or referendum, he must be registered in the permanent list of voters for the city or municipality in which he resides.</p>
116	<p>Who may be registered in the list - All persons having complied with the requisites herein prescribed for the registration of voters shall be registered in the list, provided they possess all the qualifications and none of the disqualifications of a voter. Those who failed to register in the election of 1984, for any reason whatsoever, may register in accordance with the provisions of this Code. Any person who may not have on the date of registration the age or period of residence required may also be registered upon proof that on the date of the</p>



	election, plebiscite or referendum he shall have such qualifications.
116	Who may be registered in the list - All persons having complied with the requisites herein prescribed for the registration of voters shall be registered in the list, provided they possess all the qualifications and none of the disqualifications of a voter. Those who failed to register in the election of 1984, for any reason whatsoever, may register in accordance with the provisions of this Code. Any person who may not have on the date of registration the age or period of residence required may also be registered upon proof that on the date of the election, plebiscite or referendum he shall have such qualifications.
117	<p>Qualifications of a voter. - Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter.</p> <p>Any person who transfers residence to another city, municipality or country solely by reason of his occupation; profession; employment in private or public service; educational activities; work in military or naval reservations; service in the army, navy or air force; the constabulary or national police force; or confinement or detention in government institutions in accordance with law, shall be deemed not to have lost his original residence.</p>
118	<p>Disqualifications - The following shall be disqualified from voting:</p> <p>(a) Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year, such disability not having been removed by plenary pardon or granted amnesty: Provided, however, That any person disqualified to vote under this paragraph shall automatically reacquire the right to vote upon expiration of five years after service of sentence.</p> <p>(b) Any person who has been adjudged by final judgment by competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law: Provided,</p>

	<p>That he shall regain his right to vote automatically upon expiration of five years after service of sentence.</p> <p>(c) Insane or incompetent persons as declared by competent authority.</p>
119	<p>Preparation of the permanent list of voters - For the preparation of the permanent list of voters in nineteen hundred and ninety-six and every twelve years thereafter, the board of election inspectors referred to in Section XIV hereof of each election precinct shall hold four meetings on the seventh Saturday, seventh Sunday, sixth Saturday and sixth Sunday preceding the date of the regular election to be held. At these meetings the board shall prepare eight copies of the list of voters of the precinct wherein it shall register the electors applying for registration.</p>
120	<p>Preparation of the list before other regular elections - For the preparation of the list before other regular elections, the board of election inspectors of each election precinct shall meet in the polling place on the seventh and sixth Saturdays before the day of the election. At these meetings, the board shall prepare and certify eight copies of the list of voters of the corresponding precinct transferring thereto the names of the voters appearing in the list used in the preceding election and including therein such new qualified voters as may apply for registration, as provided in Section 126 hereof.</p>
121	<p>Preparation of the list before any special election, plebiscite or referendum. - For the preparation of the list of voters before a special election, plebiscite or referendum, the board of elections inspectors of each election precinct shall hold a meeting in the polling place on the second Saturday following the day of the proclamation calling such election. At this meeting the board shall transfer the names of the voters appearing in the list used in the preceding election and enter those of the newly registered voters.</p>
122	<p>Transfer of names of voters from the permanent list to the current one - The transfer of the names of the voters of the precinct already registered in the list used in the preceding election to the list to be made as provided for in the two preceding sections is a ministerial duty of the board, and any omission or error in copying shall be corrected <i>motu proprio</i>, or upon petition of the interested party,</p>

	<p>without delay and in no case beyond three days from the time such error is noticed; and if the board should refuse, the interested party may apply for such correction to the proper municipal or metropolitan trial court which shall decide the case without delay and in no case beyond three days from the date the petition is filed. The decision of the proper municipal or metropolitan trial court shall be final and unappealable in whatever form or manner.</p> <p>To facilitate the transfer of names of voters, the election registrar shall deliver the book of voters to the board of election inspectors on the day before the registration of voters, to be returned after the last day of registration.</p>
123	<p>Cancellation and exclusion in the transfer of names - In transferring the names of the voters of the precinct from the list used in the preceding election to the current list, the board shall exclude those who have applied for the cancellation of their registration, those who have died, those who did not vote in the immediately preceding two successive regular elections, those who have been excluded by court orders issued in accordance with the provisions of this Code, and those who have been disqualified, upon motion of any member of the board or of any elector or watcher, upon satisfactory proof to the board and upon summons to the voter in cases of disqualification. The motion shall be decided by the board without delay and in no case beyond three days from its filing. Should the board deny the motion, or fail to act thereon within the period herein fixed, the interested party may apply for such exclusion to the municipal or metropolitan trial court which shall decide the petition without delay and in no case beyond three days from the date the petition is filed. The decision of the court shall be final. The poll clerk shall keep a record of these exclusions and shall furnish three copies thereof to the election registrar who shall, in turn keep one copy and send the two other copies thereof to the provincial election supervisor and the Commission, to be attached by them to the permanent list under their custody.</p>
127	<p>Illiterate or disabled applicants - The voter's affidavit of an illiterate or physically disabled person may be prepared by any relative within the fourth civil degree of consanguinity of affinity or by any member of the board of election inspectors who shall prepare the affidavit in accordance with the data supplied by the</p>

	applicant.
128	Voter's identification - The identification card issued to the voter shall serve and be considered as a document for the identification of each registered voter: Provided, however, That if the voter's identity is challenged on election day and he cannot present his voter identification card, his identity may be established by the specimen signatures, the photograph or the fingerprints in his voter's affidavit in the book of voters. No extra or duplicate copy of the voter identification card shall be prepared and issued except upon authority of the Commission.
129	Action by the board of election inspectors - Upon receipt of the voter's affidavit, the board of election inspectors shall examine the data therein. If it finds that the applicant possesses all the qualifications and none of the disqualifications of a voter, he shall be registered. Otherwise, he shall not be registered.
132	Preservation of voter's affidavits - A copy of the affidavit of each voter shall be kept by the board of election inspectors until after the election when it shall deliver the same to the election registrar together with the copies of the list of voters and other election papers for use in the next election. The election registrar shall compile the voter's affidavits by precinct alphabetically in a book of voters. The other two copies shall be sent by the board of election inspectors on the day following the date of the affidavit to the office of the provincial election supervisor and the Commission in Manila. The provincial election supervisor and the Commission shall respectively file and preserve the voter's affidavits by city and municipality and in alphabetical order of their surnames. The fourth copy shall be given to the voter as evidence of his registration.
134	Certificate of the board of election inspectors in the list of voters. - Upon the adjournment of each meeting for the registration of voters, the board of election inspectors shall close each alphabetical group of surnames of voters by writing the dates on the next line in blank, which shall be forthwith signed by each member, and, before adding a new name on the same page at the next meeting, it shall write the following: " <i>Added at the _ _ _ meeting</i> " specifying if it is the second third or fourth meeting of the board, as the case may be. If the meeting adjourned is the last one for the registration of voters, the board shall, besides

	<p>closing each alphabetical group of voters as above provided, add at the end of the list a certificate (a) of the corrections and cancellations made in the permanent list, specifying them, or that there has been none, and (b) of the total number of voters registered in the precinct</p>
135	<p>Publication of the list - At the first hour of the working day following the last day of registration of voters, the poll clerk shall deliver to the election registrar a copy of the list certified to by the board of election inspectors as provided in the preceding section; another copy, also certified, shall be sent to the provincial election supervisor of the province, and another, likewise certified, shall be sent to the Commission, in whose offices said copies shall be open to public inspection during regular office hours. On the same day and hour, the poll clerk shall also post a copy of the list in the polling place in a secure place on the door or near the same at a height of a meter and a half, where it may be conveniently consulted by the interested parties. The chairman, poll clerk and the two members of the board of election inspectors shall each keep a copy of the list which may be inspected by the public in their residence or office during regular office hours. Immediately after the meeting for the closing of the list, the poll clerk shall also send a notice to the election registrar, provincial election supervisor and the Commission regarding the changes and the numbering above referred to, to be attached to the copy of the list under their custody.</p>
148	<p>List of voters - Fifteen days before the date of the regular election or special election, referendum or plebiscite, the board of election inspectors must post the final list of voters in each precinct with each and every page thereof duly signed or subscribed and sworn to by the members of the board of election inspectors and that failure to comply with this provision will constitute an election offense. Any candidate or authorized representative of an accredited political party, upon formal request made to an election registrar, shall be entitled to a certified copy of the most recent list of voters in any precinct, municipality, city or province, upon payment of a reasonable fee as may be prescribed by the Commission.</p>
150	<p>Arrangements of election precincts - (a) Each election precinct shall have, as far as possible not more than three hundred voters and shall comprise, as far as</p>

	<p>practicable, contiguous and compact territory.</p> <p>(b) When it appears that an election precinct contains more than three hundred voters, the Commission shall, in the interest of orderly election, and in order to facilitate the casting of votes, be authorized to divide a precinct not later than one week after the last day of registration of voters. But the polling place of all the precincts created thereby shall be located in the same building or compound where the polling place of the original precinct is located, and if this be not feasible, in a place as close as possible to the polling place of the original precinct: Provided, however, That the polling place of the new precinct may be located elsewhere upon written petition of the majority of the voters of the new precinct: Provided, further, That when a precinct is divided into two or more precincts, the registered voters shall be included in the precinct wherein they reside. Every case of alteration of a precinct shall be duly published by posting a notice of any change in conspicuous location in the precinct, and in the municipal building or city hall, as the case may be.</p> <p>(c) A municipality which has been merged with another municipality shall constitute at least one election precinct, if the distance between the remotest <i>barangay</i> of the merged municipality and the nearest polling place in the municipality to which it has been merged shall, by the shortest road, exceed five kilometers.</p> <p>(d) An island or group of islands having one hundred and fifty or more voters shall constitute a precinct.</p> <p>(e) Any alteration of the election precincts or the establishment of new ones shall be communicated to the provincial election supervisor, the provincial superintendent of schools, etc. together with the corresponding maps, which shall be published as prescribed in the next succeeding sections.</p>
152	<p>Polling place - A polling place is the building or place where the board of election inspectors conducts its proceedings and where the voters shall cast their votes.</p>
172	<p>Proceedings of the board of election inspectors - The meetings of the board of election inspectors shall be public and shall be held only in the polling place</p>

	authorized by the Commission.
173	Prohibition of political activity - No member of the board of election inspectors shall engage in any partisan political activity or take part in the election except to discharge his duties as such and to vote.
174	Functioning of the board of election inspectors - The board of election inspectors shall act through its chairman, and shall decide without delay by majority vote all questions which may arise in the performance of its duties.
178	<p>Official watchers of candidates - Every registered political party, coalition of political parties and every independent candidate shall each be entitled to one watcher in every polling place.</p> <p>No person shall be appointed watcher unless he is a qualified voter of the city or municipality, of good reputation and shall not have been convicted by final judgment of any election offense or of any other crime, must know how to read and write Pilipino, English, Spanish or any of the prevailing local dialects, and not related within the fourth civil degree of consanguinity or affinity to the chairman or any member of the board of election inspectors in the polling place where he seeks appointment as a watcher.</p> <p>Each candidate, political party or coalition of political parties shall designate in every province, highly urbanized city or district in the Metropolitan Manila area, a representative authorized to appoint watchers, furnishing the provincial election supervisor or the city election registrar, as the case may be, the names of such representatives. The provincial election supervisors shall furnish the municipal election registrars and election registrars of component cities with the list of such representatives.</p> <p>In the case of Metropolitan Manila, the designation of the persons authorized to appoint watchers shall be filed with the Commission, which shall furnish the list of such representatives to the respective city and municipal election registrars.</p>
180	Other watchers - The duly accredited citizens arm of the Commission shall be entitled to appoint a watcher in every polling place. Other civic, religious, professional, business, service, youth and any other similar organizations, with prior authority of the Commission, shall be entitled collectively to appoint one

	<p>watcher in every polling place.</p>
182	<p>Emergency ballots - No ballots other than the official ballots shall be used or counted, except in the event of failure to receive the official ballots on time, or where there are no sufficient ballots for all registered voters or where they are destroyed at such time as shall render it impossible to provide other official ballots, in which cases the city or municipal treasurer shall provide other ballots which shall be as similar to the official ones as circumstances will permit and which shall be uniform within each polling place. The treasurer shall immediately report such action to the Commission.</p> <p>The municipal treasurer shall not undertake the preparation of the emergency ballots unless the political parties, candidates and the organizations collectively authorized by the Commission to designate watchers have been sufficiently notified to send their representatives and have agreed in writing to the preparation and use of emergency ballots.</p>
184	<p>Printing of official ballots and elections returns - The official ballots and election returns shall be printed by the Government Printing Office and/or the Central Bank printing facilities exclusively, under the exclusive supervision and control of the Commission which shall determine and provide the necessary security measures in the printing, storage and distribution thereof.</p> <p>Each ballot shall be joined by a perforated line to a stub numbered consecutively, beginning with number "1" in each city and municipality. Each ballot shall also have at the bottom a detachable coupon bearing the same number of the stub.</p> <p>Each pad of ballots shall bear on its cover the name of the city or municipality in which the ballots are to be used and the inclusive serial numbers of the ballots contained therein.</p> <p>The official ballots shall be bound in separate pads of fifty or one hundred ballots each as may be required.</p> <p>The election returns shall be prepared in sets of six copies per set and shall be numbered consecutively, beginning with number "1" in each city and municipality. Each set of the election returns shall be printed in such a manner that will ensure that the entries on the original of the returns are clearly</p>



	reproduced on the other copies thereof and shall bear the name of the city or municipality in which the returns are to be used. For this purposes, the Commission shall acquire, if necessary, a special kind of carbon paper or chemically treated paper.
185	<p>Sample official ballots - The Commission shall provide the board of election inspectors with sample official ballots at the rate of thirty ballots per polling place. The sample official ballots shall be printed on colored paper, in all respects like the official ballots but bearing instead the words "Sample Official Ballot", to be shown to the public and used in demonstrating how to fill out and fold the official ballots properly. No name of any actual candidate shall be written on the spaces for voting on the sample official ballots provided by the Commission, nor shall they be used for voting.</p>
186	<p>Distribution of official ballots and election returns - The official ballots and the election returns shall be distributed by the Commission to each city and municipality at the rate of one and one-fifth ballots for every voter registered in each polling place; and for election returns, at the rate of one set each for every polling place.</p> <p>The provincial, city or municipal treasurer shall respectively keep a record of the quantity and serial numbers of official ballots and election returns furnished the various provinces, cities, municipalities and polling places, as the case may be, legible copies of which record shall be furnished the duly authorized provincial, city or municipal representatives of the ruling party and the dominant opposition party, and the Commission immediately after the distribution is made of such official ballots and election returns.</p> <p>The Commission shall prescribe the use of official delivery receipts to be signed by the election registrar and the chairman of the board of canvassers upon receipt of the election returns.</p> <p>No official ballots or election returns shall be delivered to the board of election inspectors earlier than the first hour of election day: Provided, however, That the Commission, after written notice to the registered political parties and the candidates, may, for justifiable reasons, authorize the delivery of said official</p>

	ballots and election returns to the board of election inspectors of any particular polling place at an earlier date.
189	<p>Representatives of the registered political parties in the verification and distribution of official ballots and election returns - The ruling party and the dominant opposition party or their respective duly authorized representatives in the different provinces, cities and municipalities, shall submit the names of their respective watchers who, together with the representatives of the Commission and the provincial, city and municipal treasurer shall verify the contents of the boxes containing the shipment of official ballots, election returns and sample official ballots received by the said treasurers.</p> <p>The provincial treasurers shall keep a record of their receipt and distribution to each municipal treasurer, while the city and municipal treasurer shall each keep a record of their distribution to the board of election inspectors.</p>
190	<p>Voting hours - The casting of votes shall start at seven o'clock in the morning and shall end at three o'clock in the afternoon, except when there are voters present within thirty meters in front of the polling place who have not yet cast their votes, in which case the voting shall continue but only to allow said voters to cast their votes without interruption. The poll clerk shall, without delay, prepare a complete list containing the names of said voters consecutively numbered, and the voters so listed shall be called to vote by announcing each name repeatedly three times in the order in which they are listed. Any voter in the list who is not present when his name is called out shall not be permitted to vote.</p>
191	<p>Preliminaries to the voting - (a) The board of election inspectors shall meet at the polling place at six-thirty o'clock in the morning of election day and shall have the book of voters containing all the approved applications of registration of voters pertaining to the polling place, the certified list of voters, the certified list of candidates, the ballot box, the official ballots, sufficient indelible pencils or ball pens for the use of the voters, the forms to be used, and all other materials which may be necessary.</p> <p>(b) Immediately thereafter, the chairman of the board of election inspectors shall</p>

	<p>open the ballot box, empty both of its compartments, exhibit them to all those present and being empty, lock its interior covers with three padlocks.</p> <p>(c) The chairman shall forthwith show to the public and the watchers present the package of official ballots received from the city, or municipal treasurer duly wrapped and sealed and the number of pads, the serial numbers and the type forms of the ballots in each pad appearing on the cover, and the book of voters duly sealed. The board of election inspectors shall then break the seals of the package of official ballots and the book of voters. The board of election inspectors shall enter in the minutes the fact that the package of ballots, and the book of voters were shown to the public with their wrapping and corresponding seals intact and/or if they find that the wrapping and seals are broken, such fact must be stated in the minutes as well as the number of pads and the serial numbers of ballots that they find in the package.</p> <p>Ballots with separately printed serial numbers shall be deemed spurious and shall not be utilized by the board of election inspectors unless the Commission representative shall order their use in writing, stating the reasons therefor.</p> <p>(d) The chairman and the two party members of the board of election inspectors shall retain in their possession their respective keys to the padlocks during the voting.</p> <p>(e) The box shall remain locked until the voting is finished and the counting begins. However, if it should become necessary to make room for more ballots, the board of election inspectors may open the box in the presence of the whole board of election inspectors and the watchers, and the chairman shall press down with his hands the ballots contained therein without removing any of them, after which the board of election inspectors shall close the box and lock it with three padlocks as hereinbefore provided.</p>
192	<p>Persons allowed in and around the polling place - During the voting, no person shall be allowed inside the polling place, except the members of the board of election inspectors, the watchers, the representatives of the Commission, the voters casting their votes, the voters waiting for their turn to get inside the booths whose number shall not exceed twice the number of booths and the voters</p>

	<p>waiting for their turn to cast their votes whose number shall not exceed twenty at any one time. The watchers shall stay only in the space reserved for them, it being illegal for them to enter places reserved for the voters or for the board of election inspectors or to mingle and talk with the voters within the polling place.</p> <p>It shall be unlawful for any officer or member of the Armed Forces of the Philippines including the Philippine Constabulary or the Integrated National Police or peace officer or any armed person belonging to any extra-legal police agency, special forces, reaction forces, strike forces, home defense units, <i>barangay tanod</i>, or other similar forces or para-military forces, including special forces, security guards, special policeman, and all other kinds of armed or unarmed extra-legal police officers, to enter any polling place, unless it is his polling place where he will vote but in such case he should immediately leave the polling place, no policeman or peace officer shall be allowed to enter or stay inside the polling place except when there is an actual disturbance of the peace and order therein. However, the board of election inspectors upon majority vote, if it deems necessary, may make a call in writing, duly entered in the minutes, for the detail of a policeman or any peace officer for their protection or for the protection of the election documents and paraphernalia, in which case, the said policeman or peace officer shall stay outside the polling place within a radius of thirty meters near enough to be easily called by the board of election inspectors at any time, but never at the door, and in no case shall the said policeman or peace officer hold any conversation with any voter or disturb or prevent or in any manner obstruct the free access of the voters to the polling place. It shall likewise be unlawful for any <i>barangay</i> official to enter and stay inside any polling place except to vote or except when serving as a watcher or member of the board of election inspectors, in which case, he shall leave the polling place immediately after voting.</p>
194	<p>Manner of obtaining ballots - The voter shall approach the chairman and shall give his name and address together with other data concerning his person. In case any member of the board of election inspectors doubts the identity of the voter, the board of election inspectors shall check his voter's identification card or, if he</p>

	<p>does not have any, the board of election inspectors shall refer to his photograph and signature in the voter's application for registration. If the board of election inspectors is satisfied with his identity, the chairman shall distinctly announce the voter's name in a tone loud enough to be plainly heard throughout the polling place. If such voter has not been challenged, or if having been challenged, the question has been decided in his favor, the voter shall forthwith affix his signature in the proper space in the voting record, and the chairman shall, after first entering the number of the ballot in the corresponding space of the voting record, deliver to the voter one ballot correctly folded. No person other than the chairman shall deliver official ballots nor shall more than one ballot be delivered at one time.</p>
195	<p>Manner of preparing the ballot - The voter, upon receiving his folded ballot, shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the individual candidate for whom he desires to vote.</p> <p>No voter shall be allowed to enter a booth occupied by another, nor enter the same accompanied by somebody, except as provided for in the succeeding section hereof, nor stay therein for a longer time than necessary, nor speak with anyone other than as herein provided while inside the polling place. It shall be unlawful to prepare the ballot outside the voting booth, or to exhibit its contents to any person, or to erase any printing from the ballot, or to intentionally tear or deface the same or put thereon any distinguishing mark. It shall likewise be unlawful to use carbon paper, paraffin paper, or other means for making a copy of the contents of the ballot or make use of any other means to identify the vote of the voter.</p>
196	<p>Preparation of ballots for illiterate and disabled persons - A voter who is illiterate or physically unable to prepare the ballot by himself may be assisted in the preparation of his ballot by a relative, by affinity or consanguinity within the fourth civil degree or if he has none, by any person of his confidence who belong to the same household or any member of the board of election inspectors, except the two party members: Provided, That no voter shall be allowed to vote as</p>

	<p>illiterate or physically disabled unless it is so indicated in his registration record: Provided, further, That in no case shall an assistor assist more than three times except the non-party members of the board of election inspectors. The person thus chosen shall prepare the ballot for the illiterate or disabled voter inside the voting booth. The person assisting shall bind himself in a formal document under oath to fill out the ballot strictly in accordance with the instructions of the voter and not to reveal the contents of the ballot prepared by him. Violation of this provision shall constitute an election offense.</p>
197	<p>Spoiled ballots - If a voter should accidentally spoil or deface a ballot in such a way that it cannot lawfully be used, he shall surrender if folded to the chairman who shall note in the corresponding space in the voting record that said ballot is spoiled. The voter shall then be entitled to another ballot which the chairman shall give him after announcing the serial number of the second ballot and recording said serial number in the corresponding spaces in the voting record. If the second ballot is again spoiled or defaced in such a way that it cannot lawfully be used, the same shall be surrendered to the chairman and recorded in the same manner as the first spoiled or defaced ballot. However, no voter shall change his ballot more than twice.</p> <p>The spoiled ballot shall, without being unfolded and without removing the detachable coupon, be distinctly marked with the word "spoiled" and signed by the board of election inspectors on the endorsement fold thereof and immediately placed in the compartment for spoiled ballots.</p>
198	<p>Voting - (a) After the voter has filled his ballot he shall fold it in the same manner as when he received it and return it to the chairman.</p> <p>(b) In the presence of all the members of the board of election inspectors, he shall affix his thumb mark on the corresponding space in the coupon, and deliver the folded ballot to the chairman.</p> <p>(c) The chairman, in the presence and view of the voter and all the members of the board of election inspectors, without unfolding the ballot or seeing its contents, shall verify its number from the voting record where it was previously entered.</p>

	<p>(d) The voter shall forth with affix his thumb mark by the side of his signature in the space intended for that purpose in the voting record and the chairman shall apply silver nitrate and <i>commassie</i> blue on the right forefinger nail or on any other available finger nail, if there be no forefinger nail.</p> <p>(e) The chairman shall sign in the proper space beside the thumb mark of the voter.</p> <p>(f) The chairman, after finding everything to be in order, shall then detach the coupon in the presence of the board of election inspectors and of the voter and shall deposit the folded ballot in the compartment for valid ballots, and the detached coupon in the compartment for spoiled ballots.</p> <p>(g) The voter shall then depart.</p> <p>Any ballot returned to the chairman whose detachable coupon has been removed not in the presence of the board of election inspectors and of the voter, or any ballot whose number does not coincide with the number of the ballot delivered to the voter, as entered in the voting record, shall be considered as spoiled and shall be so marked and signed by the members of the board of election inspectors.</p>
202	<p>Record of challenges and oaths - The poll clerk shall keep a prescribed record of challenges and oaths taken in connection therewith and the resolution of the board of election inspectors in each case and, upon the termination of the voting, shall certify that it contains all the challenges made. The original of this record shall be attached to the original copy of the minutes of the voting as provided in the succeeding section.</p>
203	<p>Minutes of voting and counting of votes - The board of election inspectors shall prepare and sign a statement in four copies setting forth the following:</p> <ol style="list-style-type: none"> <li>1. The time the voting commenced and ended;</li> <li>2. The serial numbers of the official ballots and election returns, special envelopes and seals received;</li> <li>3. The number of official ballots used and the number left unused;</li> <li>4. The number of voters who cast their votes;</li> <li>5. The number of voters challenged during the voting;</li> <li>6. The names of the watchers present;</li> </ol>

	<p>7. The time the counting of votes commenced and ended;</p> <p>8. The number of official ballots found inside the compartment for valid ballots;</p> <p>9. The number of valid ballots, if any, retrieved from the compartment for spoiled ballots;</p> <p>10. The number of ballots, if any, found folded together;</p> <p>11. The number of spoiled ballots withdrawn from the compartment for valid ballots;</p> <p>12. The number of excess ballots;</p> <p>13. The number of marked ballots;</p> <p>14. The number of ballots read and counted;</p> <p>15. The time the election returns were signed and sealed in their respective special envelopes;</p> <p>16. The number and nature of protests made by watchers; and</p> <p>17. Such other matters that the Commission may require.</p> <p>Copies of this statement after being duly accomplished shall be sealed in separate envelopes and shall be distributed as follows: (a) the original to the city or municipal election registrar; (b) the second copy to be deposited inside the compartment for valid ballots of the ballot box; and (c) the third and fourth copies to the representatives of the accredited political parties.</p>
204	<p>Disposition of unused ballots at the close of the voting hours - The chairman of the board of election inspectors shall prepare a list showing the number of unused ballots together with the serial numbers. This list shall be signed by all the members of the board of election inspectors, after which all the unused ballots shall be torn halfway in the presence of the members of the board of election inspectors.</p>
205	<p>Prohibition of premature announcement of voting - No member of the board of election inspectors shall, before the termination of the voting, make any announcement as to whether a certain registered voter has already voted or not, as to how many have already voted or how many so far have failed to vote, or any other fact tending to show or showing the state of the polls, nor shall he make any statement at any time, except as witness before a court, as to how any person</p>



	voted.
206	<p>Counting to be public and without interruption - As soon as the voting is finished, the board of election inspectors shall publicly count in the polling place the votes cast and ascertain the results. The board of election inspectors shall not adjourn or postpone or delay the count until it has been fully completed, unless otherwise ordered by the Commission.</p> <p>The Commission, in the interest of free, orderly, and honest elections, may order the board of election inspectors to count the votes and to accomplish the election returns and other forms prescribed under this Code in any other place within a public building in the same municipality or city: Provided, That the said public building shall not be located within the perimeter of or inside a military or police camp or reservation nor inside a prison compound.</p>
207	<p>Excess ballots - Before proceeding to count the votes the board of election inspectors shall count the ballots in the compartment for valid ballots without unfolding them or exposing their contents, except so far as to ascertain that each ballot is single, and compare the number of ballots in the box with the number of voters who have voted. If there are excess ballots, they shall be returned in the box and thoroughly mixed therein, and the poll clerk, without seeing the ballots and with his back to the box, shall publicly draw out as many ballots as may be equal to the excess and without unfolding them, place them in an envelope which shall be marked "excess ballots" and which shall be sealed and signed by the members of the board of election inspectors. The envelope shall be placed in the compartment for valid ballots, but its contents shall not be read in the counting of votes. If in the course of the examination ballots are found folded together before they were deposited in the box, they shall be placed in the envelope for excess ballots. In case ballots with their detachable coupons be found in the box, such coupons shall be removed and deposited in the compartment for spoiled ballots, and the ballots shall be included in the file of valid ballots. If ballots with the words "spoiled" be found in the box, such ballots shall likewise be placed in the compartment for spoiled ballots.</p>
208	<p>Marked ballots - The board of election inspectors shall then unfold the ballots and</p>

	<p>determine whether there are any marked ballots, and, if any be found, they shall be placed in an envelope labelled "marked ballots" which shall be sealed and signed by the members of the board of election inspectors and placed in the compartment for valid ballots and shall not be counted. A majority vote of the board of election inspectors shall be sufficient to determine whether any ballot is marked or not. Non-official ballots which the board of election inspectors may find, except those which have been used as emergency ballots, shall be considered as marked ballots.</p>
209	<p>Compartment for spoiled ballots - The ballots deposited in the compartment for spoiled ballots shall be presumed to be spoiled ballots, whether or not they contain such notation; but if the board of election inspectors should find that during the voting any valid ballot was erroneously deposited in this compartment, or if any ballot separated as excess or marked had been erroneously deposited therein, the board of election inspectors shall open said compartment after the voting and before the counting of votes for the sole purpose of drawing out the ballots erroneously deposited therein. It shall then prepare and sign a statement of such fact and lock the box with its three keys immediately thereafter. The valid ballots so withdrawn shall be mixed with the other valid ballots, and the excess or marked ballots shall be placed in their proper envelopes which shall for such purposes be opened and again labelled, sealed, signed and kept as hereinafter provided.</p>
210	<p>Manner of counting votes - The counting of votes shall be made in the following manner: the board of election inspectors shall unfold the ballots and form separate piles of one hundred ballots each, which shall be held together with rubber bands, with cardboard of the size of the ballots to serve as folders. The chairman of the board of election inspectors shall take the ballots of the first pile one by one and read the names of candidates voted for and the offices for which they were voted in the order in which they appear thereon, assuming such a position as to enable all of the watchers to read such names. The chairman shall sign and affix his right hand thumb mark at the back of the ballot immediately after it is counted. The poll clerk, and the third member, respectively, shall record</p>

	<p>on the election returns and the tally board or sheet each vote as the names voted for each office are read.</p> <p>Each vote shall be recorded by a vertical line, except every fifth vote which shall be recorded by a diagonal line crossing the previous four vertical lines. One party member shall see to it that the chairman reads the vote as written on the ballot, and the other shall check the recording of the votes on the tally board or sheet and the election returns seeing to it that the same are correctly accomplished. After finishing the first pile of ballots, the board of election inspectors shall determine the total number of votes recorded for each candidate, the sum being noted on the tally board or sheet and on the election returns. In case of discrepancy such recount as may be necessary shall be made. The ballots shall then be grouped together again as before the reading. Thereafter, the same procedure shall be followed with the second pile of ballots and so on successively. After all the ballots have been read, the board of election inspectors shall sum up the totals recorded for each candidate, and the aggregate sum shall be recorded both on the tally board or sheet and on the election returns. It shall then place the counted ballots in an envelope provided for the purpose, which shall be closed signed and deposited in the compartment for valid ballots. The tally board or sheet as accomplished and certified by the board of election inspectors shall not be changed or destroyed but shall be kept in the compartment for valid ballots.</p>
211	<p>Rules for the appreciation of ballots - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection</p>
212	<p>Election returns - The board of election inspectors shall prepare the election returns simultaneously with the counting of the votes in the polling place as prescribed in Section 210 hereof. The return shall be prepared in sextuplicate. The recording of votes shall be made as prescribed in said section. The entry of votes in words and figures for each candidate shall be closed with the signature and the clear imprint of the thumb mark of the right hand of all the members, likewise to be affixed in full view of the public, immediately after the last vote recorded or immediately after the name of the candidate who did not receive any</p>

	vote.
213	Proclamation of the result of the election in the polling place - Upon the completion of the election returns, the chairman of the board of election inspectors shall orally and publicly announce the total number of votes received in the election in the polling place by each and every one of the candidates, stating their corresponding office.
214	<p>Disposition of election returns - (1) In a presidential election: the board of election inspectors shall prepare in handwriting and sign the returns of the election in sextuplicate in their respective polling place in a form to be prescribed by the Commission. One copy shall be deposited in the compartment of the ballot box for valid ballots, and in the case of municipalities two copies including the original copy shall be handed to the municipal election registrar who shall immediately deliver the original copy to the provincial election supervisor and forward the other copy to the Commission, and one copy each to the authorized representatives of the accredited political parties. In the case of the cities, the city registrar shall retain the original copy for submission to the provincial election supervisor, and forward the other copy to the Commission.</p> <p>(2) In the election for Members of the <i>Batasang Pambansa</i>: the original of the election returns shall be delivered to the election registrar of the city or municipality for transmittal to the chairman of the provincial board of canvassers, and direct to the chairman of the city or district board of canvassers in the urbanized cities and the districts of Metropolitan Manila, as the case may be, for use in the canvass. The second copy shall likewise be delivered to the election registrar for transmittal to the Commission. The third copy shall be deposited in the compartment for valid ballots. The fourth copy shall be delivered to the election registrar who shall use said copy in the tabulation of the advance results of the election in the city or municipality. The fifth and sixth copies shall each respectively be delivered to the members representing political parties represented in the board of election inspectors.</p> <p>(3) In local elections: the original copy of the election returns shall be delivered to the city or municipal board of canvassers as a body for its use in the city of</p>

	<p>municipal canvass. The second copy shall be delivered to the election registrar of the city or municipality for transmittal to the provincial board of canvassers as a body for its use in the provincial canvass. The third copy shall likewise be delivered to the election registrar for transmittal to the Commission. The fourth copy shall be deposited in the compartment for valid ballots. The fifth and sixth copies shall each respectively be delivered to the members representing the political parties represented in the board of election inspectors.</p> <p>The Commission shall promulgate rules for the speedy and safe delivery of the election returns.</p>
215	<p>Board of election inspectors to issue a certificate of the number of votes polled by the candidates for an office to the watchers - After the announcement of the results of the election and before leaving the polling place, it shall be the duty of the board of election inspectors to issue a certificate of the number of the votes received by a candidate upon request of the watchers. All the members of the board of election inspectors shall sign the certificate.</p>
216	<p>Alterations and corrections in the election returns - Any correction or alteration made in the election, returns by the board of election inspectors before the announcement of the results of the election in the polling place shall be duly initialed by all the members thereof.</p>
217	<p>Delivery of the ballot boxes, keys and election supplies and documents - Upon the termination of the counting of votes, the board of election inspectors shall place in the compartment for valid ballots, the envelopes for used ballots hereinbefore referred to, the unused ballots, the tally board or sheet, a copy of the election returns, and the minutes of its proceedings, and then shall lock the ballot box with three padlocks and such safety devices as the Commission may prescribe. Immediately after the box is locked, the three keys of the padlocks shall be placed in three separate envelopes and shall be sealed and signed by all the members of the board of election inspectors. The authorized representatives of the Commission shall forthwith take delivery of said envelopes, signing a receipt therefor, and deliver without delay one envelope to the provincial treasurer, another to the provincial fiscal and the other to the provincial election</p>

	supervisor.
218	<p>Preservation of the voting record - The voting record of each polling place shall be delivered to the election registrar who shall have custody of the same, keeping them in a safe place, until such time that the Commission shall give instructions on their disposition.</p>
219	<p>Preservation of the ballot boxes, their keys and disposition of their contents - (a) The provincial election supervisor, the provincial treasurer and the provincial fiscal shall keep the envelope containing the keys in their possession intact during the period of three months following the election. Upon the lapse of this period, unless the Commission has ordered otherwise, the provincial election supervisor and the provincial fiscal shall deliver to the provincial treasurer the envelope containing the keys under their custody.</p> <p>(b) The city and municipal treasurer shall keep the ballot boxes under their responsibility for three months and stored unopened in a secure place, unless the Commission orders otherwise whenever said ballot boxes are needed in any political exercise which might be called within the said period, provided these are not involved in any election contest or official investigation, or the Commission or other competent authority shall demand them sooner or shall order their preservation for a longer time in connection with any pending contest or investigation. However, upon showing by any candidate that the boxes will be in danger of being violated if kept in the possession of such officials, the Commission may order them kept by any other official whom it may designate. Upon the lapse of said time and if there should be no order to the contrary, the Commission may authorize the city and municipal treasurer in the presence of its representative to open the boxes and burn their contents, except the copy of the minutes of the voting and the election returns deposited therein which they shall take and keep.</p> <p>(c) In case of calamity or fortuitous event such as fire, flood, storm, or other similar calamities which may actually cause damage to the ballot boxes and/or their contents, the Commission may authorize the opening of said ballot boxes to salvage the ballots and other contents by placing them in other ballot boxes,</p>

	taking such other precautionary measures as may be necessary to preserve such documents.
220	Documents and sections omitted or erroneously placed inside the ballot box - If after the delivery of the keys of the ballot box to the proper authorities, the board of election inspectors shall discover that some documents or sections required to be placed in the ballot box were not placed therein, the board of election inspectors, instead of opening the ballot box in order to place therein said documents or sections, shall deliver the same to the Commission or its duly authorized representatives. In no instance shall the ballot box be reopened to place therein or take out therefrom any document or section except to retrieve copies of the election returns which will be needed in any canvass and in such excepted instances, the members of the board of election inspectors and watchers of the candidates shall be notified of the time and place of the opening of said ballot box: Provided, however, That if there are other copies of the election returns outside of the ballot box which can be used in canvass, such copies of the election returns shall be used in said canvass and the opening of the ballot box to retrieve copies of the election returns placed therein shall then be dispensed with.
223	Prohibition against leaving official station - During the period beginning election day until the proclamation of the winning candidates, no member or substitute member of the different boards of canvassers shall be transferred, assigned or detailed outside of his official station, nor shall he leave said station without prior authority of the Commission.
229	Manner of delivery and transmittal of election returns - (a) For the city and municipal board of canvassers, the copy of the election returns of a polling place intended for the city or municipal board of canvassers, duly placed inside a sealed envelope signed and affixed with the imprint of the thumb of the right hand of all the members of the board of election inspectors, shall be personally delivered by the members of the board of election inspectors to the city or municipal board of canvassers under proper receipt to be signed by all the members thereof. (b) For the provincial and district boards of canvassers in Metropolitan Manila,

the copy of the election returns of a polling place intended for the provincial or district board of canvassers in the case of Metropolitan Manila, shall be personally delivered by the members of the board of election inspectors to the election registrar for transmittal to the proper board of canvassers under proper receipt to be signed by all the members thereof.

The election registrar concerned shall place all the returns intended for the board of canvassers inside a ballot box provided with three padlocks whose keys shall be kept as follows: one by the election registrar, another by the representative of the ruling party and the third by the representative of the dominant political opposition party.

For this purpose, the two political parties shall designate their representatives whose names shall be submitted to the election registrar concerned on or before the tenth day preceding the election. The three in possession of the keys shall personally transmit the ballot box, properly locked, containing the election returns to the board of canvassers. Watchers of political parties, coalition of political parties, and of organizations collectively authorized by the Commission to designate watchers shall have the right to accompany transmittal of the ballot boxes containing the election returns.

It shall be unlawful for any person to delay, obstruct, impede or prevent through force, violence, coercion, intimidation or by any means which vitiates consent, the transmittal of the election returns or to take away, abscond with, destroy, deface or mutilate or substitute the election returns or the envelope or the ballot box containing the election returns or to violate the right of the watchers.

The watchers of the political parties, coalition of political parties and the candidates shall have the right to accompany the members of the board of election inspectors or the election registrar in making the delivery to the boards of canvassers.

230

Safekeeping of transmitted election returns - The board of canvassers shall keep the ballot boxes containing the election returns in a safe and secure room before and after the canvass. The door to the room must be padlocked by three locks with the keys thereof kept as follows: one with the chairman, the other with the



	<p>representative of the ruling party, and the other with the representative of the dominant opposition political party. The watchers of candidates, political parties, coalition of political parties and organization collectively authorized by the Commission to appoint watchers shall have the right to guard the room. Violation of this right shall constitute an election offense.</p>
<p>231</p>	<p>Canvass by the board - The board of canvassers shall meet not later than six o'clock in the afternoon of election day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other polling places within its jurisdiction. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.</p> <p>The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or <i>barangay</i>. Failure to comply with this requirement shall constitute an election offense.</p> <p>Subject to reasonable exceptions, the board of canvassers must complete their canvass within thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces. Violation hereof shall be an election offense punishable under Section 264 hereof.</p> <p>With respect to the election for President and Vice-President, the provincial and city boards of canvassers shall prepare in quintuplicate a certificate of canvass supported by a statement of votes received by each candidate in each polling</p>

	place and transmit the first copy thereof to the Speaker of the <i>Batasang Pambansa</i> . The second copy shall be transmitted to the Commission, the third copy shall be kept by the provincial election supervisor or city election registrar; the fourth and the fifth copies to each of the two accredited political parties.
233	<p>When the election returns are delayed, lost or destroyed - In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.</p> <p>The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election.</p>
234	<p>Material defects in the election returns - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter</p>

	<p>complete the returns.</p> <p>The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.</p>
235	<p>When election returns appear to be tampered with or falsified - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.</p>
236	<p>Discrepancies in election returns - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining</p>

	the true result of the count of votes of the candidates concerned.
239	<p>Watchers - Each candidate, political party or coalition of political parties shall be entitled to appoint one watcher in the board of canvassers. The watcher shall have the right to be present at, and take note of, all the proceedings of the board of canvassers, to read the election returns without touching them, to file a protest against any irregularity in the election returns submitted, and to obtain from the board of canvassers a resolution thereon.</p>
240	<p>Election resulting in tie - Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favored by luck and his proclamation on the basis thereof.</p> <p>Nothing in this section shall be construed as depriving a candidate of his right to contest the election.</p>

**Appendix 38**  
**Settlement of Irregularities**  
**In the 1999 Indonesian General Election**

Types of Irregularities	Follow Up			Total
	Settled	Forward to Police	Submit to Court	
Administrative Violations	1394	3	1	1398
Violation on Procedures	1785	12		1797
Election Offences	347	236	24	707
"Money Politics"	122	18		140
Violation related to Neutrality of Bureaucracy	234	1	1	236
<b>Total</b>	<b>3992</b>	<b>270</b>	<b>26</b>	<b>4290</b>

Source: Report of the General Election Supervisory Committee 1999, November 1999

### Appendix 39

#### Settlement of Election Offences in the 2004 Indonesian General Election

No.	Election Stage	Election Offences Report				
		Report Received	Forward to Investigator	Forward to Prosecutor	Submit to Court	Judgment
1	Registration of Voters	0	0	0	0	0
2	Verification of election participant	170	84	62	54	52
3	Constituency Delimitation and Allocation of Seats	0	0	0	0	0
4	Verification of Candidate	1186	995	587	537	516
5	Campaign	1203	924	382	293	297
6	Voting and Counting	594	410	222	181	157
7	Declaration of Election Result	0	0	0	0	0
8	Declaration of Seats and Winning Candidate	0	0	0	0	0
9	Sworn of new Parliamentary member	0	0	0	0	0
<b>TOTAL</b>		<b>3153</b>	<b>2413</b>	<b>1253</b>	<b>1065</b>	<b>1022</b>

Source: *Panitia Pengawas Pemilu*, Final Report of Legislative General Elections Supervising (2004)

### Appendix 40

#### Number of Electoral Offense Cases Filed and Resolved in the Philippines by the COMELEC

Year	Number of Cases Filed	Number of Cases Resolved
1992	584	424
1993	193	106
1994	817	454
1995	549	441
1996	1,118	70
1997	564	368
1998	473	342
1999	190	62
2000	51	2
2001	364	1
2002 (as of 15 March 2002)	43	0

Source: Commission on Elections (COMELEC)