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Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id
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Redesigning the Concept of Law Enforcement in Administrative Violations of General Elections in Indonesia

Jamil, Moh. Fadli, Shinta Hadiyantina and Ngesti Dwi Prasetyo
jamil83@student.ub.ac.id
Universitas Brawijaya, Indonesia

Abstract
Trial mechanism as the only procedure in resolving election administrative violations is a mechanism that is not in accordance with the concept of law enforcement in administrative law that uses not only the trial mechanism but also direct sanctions. Therefore, the concept of law enforcement in these violations needs to be redesigned, to be in line with the administrative law and be more effective and easier to implement. This study examined the concept of law enforcement in administrative law as a conceptual and theoretical basis in redesigning the concept of law enforcement in election administrative violations. It used legal research methods with statutory, conceptual, and comparative approaches. The results of this study recommend a new concept in resolving election administrative violations by looking at the legal subjects who commit violations and the characteristics of the violations. For the violations committed by non-officials, the law enforcement is sufficient to use direct sanctions. Meanwhile, for the violations committed by officials, if they cause direct losses, it must use a trial mechanism. But, if the violation is only limited to non-compliance with the legislation and does not cause harm to anyone, direct sanctions can be executed. Hence, it is necessary to change the mechanism for resolving election administrative violations as stipulated in the Election Law.
Keywords: Characteristics of Administrative Law; Electoral Administrative Violations; Administrative Law Enforcement.

Introduction

The first election in Indonesia was held in 1955 in two stages, the election of Legislative Assembly members held on 29 September, 1955 and the election of Constituent Assembly members held on 15 December, 1955. The implementation process of the election was considered the most successful one because it was carried out securely, honestly, smoothly, and fairly. However, the next election was not the same as the first election, because the next election was prone to being

controlled by politics and caused many election violations and disputes, including the implementation of elections after the reformation era.[1]

Various problems in elections are always accompanied by many factors, including ethical, administrative, and even criminal issues.[2] It cannot be separated from the fluctuating dynamics of elections influenced by political changes in a certain period of time.[3] Vickery argued that a strong electoral structure must have the capacity to resolve disputes that arise during elections through a fair, transparent, and efficient process.[4]

Each country has a different way of resolving various electoral issues, including Indonesia. The Election Law in Indonesia through Law Number 7 of 2017 concerning Elections (hereinafter referred to as the Election Law) classifies the issues into several concepts of election violations, namely administrative violations, violations of the election code of ethics, and violations of other laws (Article 455 of the Election Law). In addition, there are also disputes over the electoral process and election results.

Administrative violations in the general election are defined as violations that include offences of procedures or mechanisms related to the administration of elections in each stage (Article 460 of the Election Law). They can be committed by the General Election Commission as an election organizing official, Political Parties as election participants for legislative candidates, Presidential and Vice-presidential candidates, Regional Representative Council candidates (individual), and even the voters.

The mechanism for resolving administrative violations is handled by General Election Supervisory Board (*Badan Pengawas Pemilu/Bawaslu*) in the state,

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[1] Fitria Esfandiari and Sholahuddin Al-Fatih, 'Initiating a Permanent Electoral Body To Resolve Dignified Election Disputes: Assessing the Effectiveness of Gakkumdu' (2020) 9 Yustisia Jurnal Hukum.[333].

[2] Ahmad Siboy, 'The Integration of the Authority of Judicial Institutions in Solving General Election Problems in Indonesia' (2021) 29 Legality : Jurnal Ilmiah Hukum.[237].

[3] Sholahuddin Al-Fatih and Asrul Ibrahim Nur, 'Does the Constitutional Court on Local Election Responsive Decisions?' (2023) 3 Journal of Human Rights, Culture and Legal System. [569].

[4] Chad Vickery, *Guidelines for Understanding Adjudicating, and Resolving Disputes in Elections* (IFES: International Foundation for Electoral Systems 2011).

province, and regency/city; as well as the sub-district level committee (*Panitia Pengawas Pemilu/Panwaslu*) in accordance with the attribution of authority at each institution. The central to the district/city-level *Bawaslu* have the authority to resolve the problems through trial mechanism for a maximum of 14 working days. This mechanism is regulated in detail in Article 461 of the Election Law.

The enforcement of the trial mechanism for electoral administrative violations has experienced difficulties to carry out, because many administrative violations only require simpler handling, in other words, not all the violations are handled through a trial. However, mechanisms other than trials are not clearly regulated in the Election Law, making it difficult for *Bawaslu* in all levels to determine the appropriate mechanism for the violations. In practice, the violations resolved through a trial mechanism are only violations committed by the General Election Commission, while the violations committed by the political parties participating in the election, the candidates, and the voters do not use a trial mechanism.

The object of an election administration violation is any act or action that violates the measures, procedures, or mechanisms related to the administration of the election in each stage (Article 5 Election Supervisory Body Regulation Number 8 of 2022). When the person who commits the violation is a State Administrative Official, the object of the violation needs to be adjusted to the expansion of the object of state administrative disputes, which is not only in a decision letter issued by the State Administrative Officials but also Factual Actions carried out by them or State Administrative Body (*materiële daad/feitelijke handelingen*) after the issuance of Law Number 30 of 2014 concerning Government Administration.[5]

It can be said that the concept of law enforcement on election administrative violations should use the concept or theory of law enforcement in administrative law. Administrative law has different characteristics from civil and criminal law, especially in terms of law enforcement for violations in administrative law. Law

[5] Jamil, 'Penerapan Konsep Perlindungan Hukum Dalam Sengketa Proses Pemilihan Umum.', *DINAMIKA HUKUM Dalam Rangka Mengabdikan 70 tahun Perjuangan dan Pengabdian Guru, Sahabat, Bapak kami Prof. Dr. Sudarsono.S.H., M.S* (Intrans Publishing Groups 2021).

enforcement of administrative violations is not resolved through the judicial process but is enforced through direct sanctions by state administrative officials or known as administrative actions. Administrative courts are only resolving disputes that occur between state administrative officials and certain individuals in society, both in the form of individuals (*naturlijk* person) and legal entities (*recht* person).

The legal problems above will be the focus of research in this article. This research will offer a solution to the conceptual problem in law enforcement for election administrative violations, namely in the form of offering a redesign of the law enforcement mechanism for election administrative violations as regulated in articles 460 and 461 of the Election Law. The redesign refers to the concepts and theories of law enforcement in administrative law.

This research used a normative research method,[6] with approaches that include statute approach, conceptual approach, and comparative approach. This research examined the normative problems contained in Law Number 7 of 2017 concerning General Elections, particularly, in the concepts of electoral administrative violations and disputes over the electoral process regulated in Articles 460 and 471 of the Election Law.

Primary and secondary legal materials were the main sources in this research. Furthermore, these materials were analyzed using theoretical and conceptual approaches. Primary legal materials in the form of laws and regulations were examined for coherence by comparing normative rules with existing theories and concepts in state administrative law. In addition to testing norms against theories and concepts, another analytical technique used by the author was to test the effectiveness of the formulation of norm concepts in the implementation of law enforcement. This technique was not to run away from normative research to empirical research but to remain in the corridor of normative research (legal research) because what was tested was the effectiveness of the formulation of norms in legislation (legal substance), not the structure of law enforcers (legal structure) or community behavior in the field (legal culture).

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[6] Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum di Indonesia* (Universitas Muhammadiyah Malang 2023).

Problems with the Concept of Law Enforcement on the Administrative Violations of General Election

Electoral administrative violations are defined as violations of procedures or mechanisms related to electoral administration at every stage of the election, apart from criminal and ethical code offences. In other words, all violations of the procedures stipulated in the electoral laws and regulations at all stages of the election other than criminal offences and code of ethics violations are electoral administrative violations.

The broad scope of the administrative violations is not in line with the law enforcement mechanism. Article 461 of the Election Law gives the authority to receive, examine, review and decide on electoral administrative violations openly to *Bawaslu* in all levels. It means that the examination mechanism for the administrative violations is carried out through a trial mechanism like a court. The single mechanism in the Election Law is difficult to apply to all electoral administrative violations, because the variants are very diverse both in terms of the characteristics of the violations, which include the role and the legal implications, as well as the legal subjects who commit violations.

The concept of administrative law enforcement is divided into two regimes, the administrative dispute regime and the administrative violation regime. Administrative Disputes or State Administration Disputes are disagreements that occur between State Administrative Officials/Bodies and certain individuals or Legal Entities (Article 1 paragraph (4) Law Number 5 of 1986). In connection with this, Emanuel Sujatmoko said that the government, in exercising its authority, sometimes clashes with the interests of the community, which ultimately gives rise to disputes. As a consequence, there is a need for legal protection for the people from arbitrary government actions.[7] Meanwhile, administrative violations are all infringements of provisions relating to state administration outside of violations

[7] Emanuel Sujatmoko, *Bentuk Hukum Kerjasama Antar Daerah* (Revka Petra Media 2016).

that fall into the criminal category.[8] The characteristic of this violation is that law enforcement does not need to be done through the courts but rather by applying direct sanctions to those who commit the violations.[9]

Administrative dispute object was initially only a State Administrative Decree, but after the issuance of the Government Administration Law, it must also be interpreted as a written decision which also includes factual actions.[10] If the actions of state administration officials are the object of a state administration dispute, then the General Election Commissions' factual actions, which in fact are state administration officials, should also be the object of a State Administration Dispute or Election Process Dispute, not Election Administrative Violations.

Starting from this logic, the author divides electoral administrative violations based on their characteristics into two, namely: First, electoral administrative violations that can cause direct losses to other legal subjects (election participants); Second, electoral administrative violations that do not cause direct losses to other legal subjects. Meanwhile, the violations based on the legal subject are divided into several parts, namely, violations committed by the Election Organizer, the Election Participants, the Voters, the Election Observers, the State Officials, the Police, the Indonesian National Army, and etc.

Table 1. Variants of Electoral Administrative Violations

Electoral Administrative Violations Based on Their Characteristics	Electoral Administrative Violations Based on the Offending Legal Subject
• Causing direct losses to other legal subjects (election participants) • Not causing direct losses to other legal subjects (election participants)	• Conducted by the Election Organizer, • the Election Participants (Political Parties, Candidate Pairs, and Individuals) • the voters, • government officials including civil servants, police, military (Indonesian National Army), and etc.

Source: analyzed by the author

[8] According to Tatiek Sri Djatmiati, all criminal provisions regulated by law relating to government power are included in administrative law and are categorized as administrative criminal provisions. See Tatiek Sri Djatmiati, *Hukum Administrasi, Sebuah Bunga Rampai* (LaksBang Justitia 2020).

[9] Titik Triwulan T dan Ismu Gunadi Widodo, *Hukum Tata Usaha Negara Dan Hukum Acara Peradilan Tata Usaha Negara Indonesia* (Prenada Media Group 2011).

[10] Ayu Putriyanti, 'Kajian Undang-Undang Administrasi Pemerintahan Dalam Kaitan Dengan Pengadilan Tata Usaha Negara' (2015) 10 Pandecta.

The division of electoral administrative violations above should affect the various ways of handling them, and not all violations that vary in character and legal subject are handled by only one mechanism, the trial. In other words, the trial mechanism is not always appropriate for all varied administrative election violations and has the potential to violate the principles of election justice as a court that requires speedy trial.

Not all concepts of law enforcement in state administrative law use judicial track, but there are also those that use direct sanctioning mechanisms. Regarding the law enforcement system in state administrative law, Tatiek Sri Djatmiati[11] divided it into two instruments, namely supervision and sanctions. Supervision is a preventive law enforcement procedure or an effort to prevent deviant actions occurring in government administration, while sanctions are repressive law enforcement or enforcement procedures for violations of government administration.

Robert Dahl in the book *Guidelines for Understanding Adjudicating, and Resolving Disputes in Elections*, stated that it is important to reduce the settlement through adjudicating by preceding administrative actions taken to resolve the occurring problems.[12] This is actually also confirmed by Maurer who generally emphasizes the function of administrative actions to serve and maintain the effectiveness of state administration as a useful tool that can be used rationally.[13]

In Dutch legal literature, the concept of state administrative law enforcement is known as "*Eenzijdige Handhaving Recht door Overheid*", that is an authority of state administration to straighten out violations of administrative law norms in order to end the violations by taking concrete action. The provision of sanctions in state administrative law is a tool of power in the nature of public law used by the authorities as a reaction to noncompliance with the norms of state administrative law. Thus, the elements of sanctions in state administrative law include:[14]

[11] Djatmiati (n 8).

[12] Vickery Chad Vickery (n 3).

[13] Loammi Wolf, 'In Search of a Definition for Administrative Action' (2017) 33 South African Journal on Human Rights.[314].

[14] W Riawan Tjandra, *Hukum Administrasi Negara* (Sinar Grafika 2019).

a. Tool of power (*macht middelen*);
b. Public law (*publiekrechtelijk*);
c. The authorities (o*verheid*);
d. Reaction to noncompliance (*reactive op niet-naleving*).

The purpose of state administrative law enforcement is the realization of legal order to protect the public interest. The two law enforcement instruments in administrative law as described above are also used in election law enforcement procedures. Supervisory procedures are carried out by *Bawaslu* to prevent violations during the implementation of elections at all stages (Article 39 of Law Number 7 of 2017), while the repressive instrument is not in the form of direct sanctions but must be processed through a trial for a maximum of 14 days (Article 461 of Law Number 7 of 2017). This single mechanism of a trial, according to the author, needs to be evaluated and adjusted to the concept of law enforcement in state administrative law. The inconsistency between the concept of law enforcement in electoral administrative offences and the concept of law enforcement in administrative law shows that the design of the concept of electoral administrative violations is not based on existing theories and concepts in administrative law. They are designed without a strong theoretical and conceptual basis so that the design of administrative violations and the concept of administrative law becomes incoherent. Based on the author's analysis, the error in designing law enforcement mechanisms in electoral administrative violations starts from the absence of grouping as the author has described.

Electoral administrative violations that can cause losses to other legal subjects in administrative law are referred to as administrative disputes. They are disputes arising in the field of government administration between citizens and government officials or other state administrators as a result of government actions. (Supreme Court Regulations Number 2 of 2019); however, not all electoral administrative violations are disputes or have implications for losses to other legal subjects. As in the case example that the author will describe below.

In election law, there are cases that can be used as examples, namely, electoral administrative violations committed by many General Election Commissions throughout Indonesia in the administrative verification stage of political parties

to become election participants. Article 39 in Election Commission Regulation (PKPU) Number 4 of 2022 regulates the mechanism of administrative verification of political party membership by presenting to the General Election Commission office when there are political parties whose membership status cannot be ascertained. However, in the administrative verification stage, the General Election Commission did not physically present political party members to the office, but it was done virtually through video calls. The mechanism of using video call facilities in conducting administrative verification of political party membership was clearly not in accordance with the mandate of PKPU Number 4 of 2022, so that the General Election Commission can be said to have committed an electoral administrative violation. The violation was reported by the Regency *Bawaslu* to the Provincial *Bawaslu*, which resolved it through a trial until a decision was issued which basically gave a warning to the General Election Commission not to repeat similar actions.

As the example, the election administrative violations committed by the General Election Commissions were reported by the General Election Supervisory Agency in the Regency/City to the Province. Furthermore, the Provincial *Bawaslu* resolved the matter through a trial until a decision was issued, which basically gave a warning to them not to repeat similar actions. For example, the decision issued by the General Election Supervisory Agency in East Java, that is Decision No. 02/TM/PL/ADM/PROV/16.00/IX/2022, Decision No. 11/TM/PL/ADM/PROV/16.00/IX/2022, and Decision No. 01/TM/PL/ADM/PROV/16.00/IX/2022.

The case above, according to the author, includes the character of electoral administrative violations that do not contain administrative disputes because no party is directly harmed by the violation. The *Bawaslu* reported that the violation was not because they were harmed, but because it was related to the *Bawaslu's* duty to enforce the law on all election violations. Meanwhile, the verified political parties are not at any disadvantage due to the General Election Commissions' factual actions, but they actually benefit for making it easy to verify their party membership. Therefore, the more appropriate mechanism to resolve the electoral

administrative violation is by imposing direct sanctions on the General Election Commission to repeat the administrative verification process in accordance with PKPU Number 4 of 2022, not with a trial mechanism.

As for the electoral administrative violations containing disputes or having implications for losses to other legal subjects, they are all real actions of the General Election Commission at various stages of the election (especially the nomination stage) that result in rights losses to election participants. This action can be in the form of a decision letter (*rechtshandelingen*) or a factual action (*feitelijke handelingen*). However, in the electoral domain, the dispute with the object of legal action *(rechtshandelingen*) in the decision letter and the dispute with the object of factual action (*feitelijke handelingen*) have different settlement mechanisms. The dispute with the object of legal action in the decision letter is resolved through the election process dispute path (Article 466 of the Election Law), while the dispute over the factual actions of the General Election Commission is resolved through the electoral administrative violation mechanism (Article 460 of the Election Law). The two paths are very different even though they both use a trial mechanism. However, dispute settlement through the election process dispute path has further legal efforts to the state administrative court while the settlement through the electoral administrative violation path has no further legal efforts because the *Bawaslu*'s decision on the violations is final and binding. According to the author, this difference is also problematic, but this paper only focuses on the discussion of electoral administrative violations, while disputes over the electoral process was discussed in another article.

The disputes between the General Election Commission and the election participants in the administrative violations occurred due to the General Election Commission's factual actions that have implications for losses to the participants. So, they had the right to challenge the General Election Commission's actions to the competent institution (*Bawaslu*) to recover the losses they had suffered. For the disputes with the characteristics as described, the *Bawaslu* resolved them through a trial mechanism. Thus, an electoral administrative violation whose subject is

a government official (General Election Commission) has two mechanisms for solution, namely direct sanctions when there is no dispute or no implications for the losses suffered by other legal subjects, and a trial when there is a dispute or implications for the losses suffered by other legal subjects.

Theoretically, what has been explained above cannot be separated from the concept of government administration actions (*besture handelingen*), which are divided into two categories, legal actions (*rechtshandelingen*) and factual actions (*feitelijke handelingen*).[15] Riawan Tjandra defined legal action as an action taken by the government based on certain legal norms and intended to cause legal consequences in certain legal fields. Meanwhile, factual government action is defined as an action taken by the government in order to serve the people's factual/material needs and it is not intended to cause legal consequences.[16] Marbun and Mahfud classified factual government actions (*feitelijke handelingen*) as a class of government actions that are irrelevant (not important) because they are not related to their authority and do not cause legal consequences.[17]

Both government administration actions are conducted in order to carry out government functions, provide services to the community interests, and maintain the interests of the state and its people. Therefore, violations that do not contain disputes should not need to be resolved through court channels in order to maintain the effectiveness of state administration, while violations that contain disputes (dispute) need to be resolved through a judicial path to maintain a balance between the rights of the people and the authority (power) possessed by the state. The characteristics of administrative violations containing disputes are violations that can cause direct losses suffered by the community. This means government actions

[15] Muhammad Adiguna Bimasakti, Perbuatan Melawan Hukum (PMH) Oleh Pemerintah/ Onrechmatige Overheidsdaad (OOOD) Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan (Deepublish 2018).

[16] W Riawan Tjandra (n 9).

[17] Bambang Arwanto, 'Perlindungan Hukum Bagi Rakyat Akibat Tindakan Faktual Pemerintah' (2017) 31 Yuridika.[358].

(*overheidsdaad*) that carry out their duties unlawfully (*onrechtmatig*) can be sued in court by legal subjects who are directly harmed.[18]

The issue of governmental actions is not new.[19] In Germany, a concept of administrative actions originated in 19th century administrative theory (*Verwaltungslehre*) and was strongly influenced by Otto Mayer, who formulated the basic elements of administrative actions, "actions taken by the executive organs of the state based on legislation, which are executed in individual cases, and can be orders, decisions or permits". Then, they are regulated through legislation that applies to all administrative acts. Article 35(1) of the *Verwaltungsverfahrensgesetz* (VwVfG) or Administrative Procedure Act of 1977, defines an administrative act as:[20] "An administrative act is any order, decision, or other action taken by an executive authority/official to regulate an individual case within the scope of public law which has direct and external legal effect...".

Meanwhile, in the Netherlands, it is also termed as "*beleidsregel*", which is regulated in the *Algemene Wet Bestuursrecht* (AWB). *Beleidsregels* is a written decision whose substance is general but not universally binding and issued by an administrative body in exercising its authority to establish certain facts or interpret a statutory regulation.[21] The context of *beleidsregels* in the AWB and administrative actions in the Administrative Procedure Act of 1977 is basically the same as the concept of government administrative actions regulated in Indonesia in the Government Administration Law.[22]

Government administrative actions in Indonesia are regulated in Article 6 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (UU AP), which reads "Government Officials have the right to exercise Authority

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[18] Sudikno Mertokusumo, Perbuatan Melawan Hukum Oleh Pemerintah (Maha Karya Pustaka 2019).

[19] Saul Zipkin, 'Administering Election Law' (2011) 95 Marquette Law Review.

[20] Wolf (n 13).

[21] A Tollenaar. (2008). Gemeentelijk Beleid en Beleidsregels. Disertasi. Rijksuniversiteit Groningen. Dalam Victor Imanuel W Nalle, 'The Scope of Discretion in Government Administration Law: Constitutional or Unconstitutional' (2018) 4 Hasanuddin Law Review.

[22] *ibid.*

in making Decisions and/or Actions". In the theoretical study, as also explained, the administrative actions are classified into a class of legal actions (*rechtshandelingen*) and a class of factual actions (*feitelijke handelingen*).[23]

Likewise in Indonesia, administrative actions are regulated in Article 6 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (UU AP), that: "Government Officials have the right to use authority in taking decisions and/or actions". Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Settlement of Governmental Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials (*Onrechtmatige Overheidsdaad*) links unlawful acts by government agencies and/or officials with factual government actions, so that it becomes the authority of state administrative officials to resolve them.

However, academics have different opinions regarding factual government actions. Some argued that factual actions as referred to by the Government Administration Law are factual actions preceded by written decisions, but others argued that what is meant by factual government actions does not have to be preceded by written decisions but includes all factual government actions.[24]

One of those who argued that factual government actions do not have to be preceded by a written government decision is Adiguna Bima Sakti (2018).[25] He categorized all actions taken by government officials (*overheid*) as factual government actions as long as they are still in the scope of public law and are related to government duties (*bestuur zorg*) and are not subject to civil law. And, when the factual actions of the government are contrary to the laws and regulations, and cause harm/loss to other parties, they are categorized as unlawful acts by the government (*onrechtmatige overhaiddaad*).

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[23] Arwanto (n 17).

[24] Ahmad Fauzi Harahap, 'Penerapan Perluasan Keputusan Tata Usaha Negara Sebagai Upaya Dalam Penegakan Hukum Administrasi Dan Kaitannya Dengan Prinsip-Prinsip Good Governance (Sebagaimana Diatur Dalam Pasal 87 UU No. 30 Tahun 2014 Tentang Administrasi Pemerintahan)' (2020) 9 Binamulia Hukum.[125].

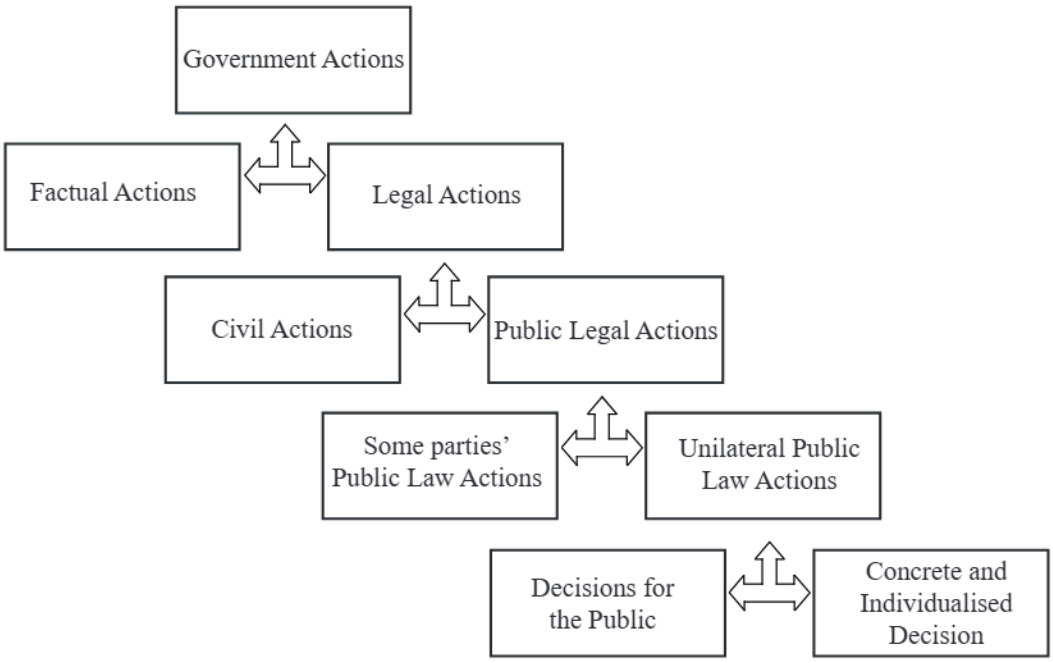
[25] Muhammad Adiguna Bimasakti, 'Act Against the Law By the Government From the View Point of the Law of Government Administration' (2018) 1 Jurnal Hukum Peratun.[265].

Differences in views regarding the role and legal implications of factual government actions (*feitelijke handelingen*) are very possible, because until now there has been no thorough and in-depth study of the role, legal implications, and characteristics of factual government actions (*feitelijke handelingen*). After the enactment of the Government Administration Law, which includes factual government actions as one of the objects of state administrative disputes, research and studies on the characteristics of these factual actions should be conducted because the Law itself does not provide clear criteria for factual actions.

The problems mentioned were because of the definition of factual actions as actions that are not intended to cause legal consequences. So, many assumed that factual actions would not have any legal implications, even though the actions are not oriented to cause legal consequences. It does not mean, however, that they would not have legal consequences on certain legal subjects, especially in countries that adhere to the principle of welfare state, where the state has a lot of interaction with the people and civil society in general in carrying out its programs.

The lack of comprehensive and in-depth studies of the factual actions of the government has resulted in many obscure rules, as well as conflicts of authority (conflict of norm) between various state institutions, such as between the ombudsman and the state administrative court because the two institutions both target factual government actions (*feitelijke handelingen*) and unlawful acts by the government (*onrechtmatige overheidsdaad*) as the object of dispute.[26] Similarly, in the context of general elections between the General Election Commission and *Bawaslu*, there is often a clash of authority in resolving or prosecuting electoral violations committed by election participants and voters. However, a fairly comprehensive study is the study of government legal action. So, the results of the study formulated variants of legal actions based on the role, legal implications, and characteristics of each legal action which includes as below.

[26] Muhammad Padol and Sukamto Satoto, 'Pengaturan Penyelesaian Tindakan Maladministrasi Dalam Perspektif Peraturan Perundang-Undangan' (2008) 3 MENDAPO (Journal of administration law).[138].



Source: W. Riawan Tjandra, (2019).[27]

A complete mapping of the factual actions of the government is needed, so that each government's factual action with different characteristics has a settlement mechanism that can also be formulated in accordance with each characteristic mapped. In the context of general elections, the author is only able to map as described in the previous paragraphs, although the author believes there are other characteristics to map and formulate a settlement mechanism.

Another problem that made election law enforcement ineffective and even inapplicable was that there was no distinction between the General Election Commission actions, which is in fact a government official, and the actions of the election participants, candidates, and voters. In this case, Sudikno Mertokusumo[28] argued that it is appropriate to distinguish between unlawful acts (*onrechtmatige daad*) between government officials and unlawful acts committed by individuals, because individual actions are driven by self-interest while government action has a background of public interest.

[27] Tjandra (n 14).
[28] Mertokusumo (n 18).

On the basis of this explanation, the author describes the settlement mechanism as in Table 2:

Table 2. Dichotomization of Law Enforcement Mechanisms for Electoral Administrative Violations

No.	Characteristics	Legal Subjects who Violate	Mechanism
1	There is a dispute and there is not.	Government officials (the General Election Commission)	Trial
2	There is no administrative dispute but purely administrative violations.	Not Government officials (the Election Participants, the Candidates, the Voters etc.)	Direct Sanctions

Source: Managed based on the author's analysis.

From the table 2, the General Election Commission's actions that violate the law (*onrechtmatige overheidsdaad*), as long as it has an impact on the losses suffered by the election participants, need a settlement using judicial mechanism. But, if there is no impact on the losses suffered by the election participants, the settlement is sufficient by giving direct sanctions in the form of improvement for actions that violate the laws and regulations relating to elections. Thus, in administrative violations committed by the General Election Commission, there are two mechanisms provided depending on the characteristics of the violation. Meanwhile, for electoral administrative violations committed by the election participants, the candidates and the voters who are not government officials, the settlement mechanism does not need to use a trial mechanism but only direct sanctions for violations committed.

Ideal Design of Law Enforcement Mechanisms for Electoral Administrative Violations of General Elections

For achieving fair elections, a significant instrument is used by designing the electoral legal provisions, since fair elections will be achieved if the electoral regulations are well-drafted.[29] In this context, the International Institute for Democracy and Electoral Assistance (International IDEA) declares that electoral

[29] Khairul Fahmi and others, 'The Restriction of Suffrage in the Perspective of Fair Election in Indonesia' (2018) 4 Hasanuddin Law Review.[41].

justice should be understood as the implementation of the electoral process according to the rules and the availability of mechanisms to resolve electoral disputes and violations within a definite timeframe.[30]

The construction of law enforcement design in electoral administrative violations should be adjusted to standard legal theories. It aims to not only achieve certainty, justice, and legal benefits but also to maintain the legal theory itself. So, it does not become inexistent because it is betrayed by the formulation of legislation at the level of legal dogmatics. Legal theory has certainly been designed through various in-depth studies that are adjusted to the effectiveness in achieving the objectives of the law itself. Therefore, adhering to it is the most appropriate way to formulate legislation.[31]

As previously explained, the Election Law only provides one mechanism for resolving the administrative violations, that is an examination in court (Article 461 paragraphs (1, 3 and 5) of the Election Law). In another article, there are actually still means of 'corrective suggestions' to resolve the violations. The diction of 'corrective suggestions' in the Election Law is only found in Article 370 in the chapter that regulates voting. There is also *Bawaslu* Regulation Number 21 of 2018 concerning Supervision of General Election Implementation, in Article 8 with the following regulatory flow:

1) In supervising each stage of the General Election, the Election Supervisor is required to write down each supervision activity in the model A form.
2) If the results of the supervision as outlined in the model A form contain allegations of violations, the Election Supervisor may carry out:
   a. suggestions for improvement, when there is an administrative error by the organizer;
   b. if the **suggestion for improvement** is not implemented, it will be a finding of alleged violation; or

[30] *ibid.*

[31] Jamil, 'Evaluasi Penyelesaian Sengketa Proses Pemilihan Umum Dalam Perspektif Konstruksi Hukumnya' (2020) 25 Perspektif.[12].

c. recording as a finding of alleged violation.

In terms of 'suggesting improvement' in the Election Law, the author has several notes, including: 1) Although the suggestion of improvement in the Election Law only exists in the voting stage, *Bawaslu* Regulation (*Perbawaslu*) Number 21 of 2018 uses it for all stages; 2) Suggestions for improvement are regulated in *Perbawaslu* on supervision (Number 21 of 2018), instead of being regulated in *Perbawaslu* on the settlement of general electoral administrative violations as stipulated in *Perbawaslu* Number 8 of 2022. It shows that the means of improvement suggestions in resolving alleged electoral administrative violations are not oriented as repressive but preventive Efforts;[32] 3) There are multiple mechanisms in the same case object (*redundant*). In other words, the suggestions are issued because there are allegations of violations while the findings reported to *Bawaslu* in a higher structure are also findings of the same alleged violations. The questions are, why not just use the suggestion of improvement to resolve alleged electoral administrative violations? what is the function of the suggestion of improvement if another trial mechanism must be carried out to resolve alleged administrative violations?.

The problems, based on the author's analysis, are because the legislators only focused on the trial mechanism in resolving electoral administrative violations. So, even though the suggestions are actually a mechanism for direct sanctions for the administrative violations, it is still considered not a repressive law enforcement mechanism but a preventive law enforcement mechanism.

The author then proposes an ideal mechanism for resolving electoral administrative violations, that is by paying attention to theories in state administrative law and juxtaposing the Election Law (Law Number 7 of 2017) with Laws governing administrative law which include Law Number 5 of 1986 concerning State Administrative Courts (Law Number 5 of 1986) based on its two amended laws, and Law Number 30 of 2014 concerning Government Administration Law.

[32] Djatmiati (n 8).

In Law Number 5 of 1986, there are state administrative disputes that occur between state administrative officials and the individuals or civil law entities. And, the object of the dispute is a decision letter issued by a state administrative official (Article 1 paragraph (4) of Law Number 5 of 1986). Law Number 30 of 2014 then expanded the object of state administrative disputes not only in the form of state administrative decisions but also factual government actions (*feitelijke handelingen*). The dispute arose because there was a loss suffered by certain individuals or civil legal entities as a result of the issuance of a decision letter or a factual government action. The settlement of the state administration dispute was resolved through a trial mechanism in the state administrative court.

In the context of general elections, state administration disputes are included in the electoral process dispute regime. The disputes are regulated in Article 466 to Article 472 of the Election Law. The administrative settlement is at *Bawaslu*, which is mandatory before being resolved at the State Administrative Court.[33] However, the object of dispute in the electoral process dispute is only the decision letter issued by the General Election Commission, while the factual actions are regulated in the electoral administrative violation regime and mixed together with electoral administrative violations committed by legal subjects that are not government officials. In addition, the concept of election process disputes as regulated in Article 466 does not only regulate disputes between person or civil legal entities against state administrative officials, but also regulates disputes between person to person or legal entities to legal entities which are called 'disputes between participants'.[34] According to the author, disputes between participants are more appropriately included in civil disputes, not state administrative disputes.[35]

[33] Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes' (2022) 2 Journal of Human Rights, Culture and Legal System.[14].

[34] Rahmad Bagja and Dayanto, *Hukum Acara Penyelesaian Sengketa Proses Pemilu: Konsep, Prosedur, dan Teknis Pelaksana* (Rajawali Pers 2020).

[35] Jamil and Ahmad Siboy, 'Penegasan Dan Perluasan Objek dan Subjek Sengketa Antar Peserta Dalam Proses Pemilihan Umum' (2022) 10 Jurnal Hukum dan Pembangunan Ekonomi.[1].

Therefore, the improvement must be started from the adjustment between state administration disputes in the election and outside the election by, first, expanding the dispute object of the election process, not only in the decision letter issued by the General Election Commission but also the factual actions that result in losses suffered by election participants. This means, electoral administrative violations of the factual actions (*feitelijke handelingen*) that result in losses suffered by election participants are part of the state administration disputes that must be included in the election process dispute regime. Second, the administrative violations committed by other than government officials (General Election Commission) do not need to be resolved using a trial mechanism but direct sanctions.

In the case of electoral administrative violations committed by the General Election Commission, if they cause losses to other parties that result in a state administrative dispute, whether the dispute arises from the decision letter (*rechtshandelingen*) or the factual actions (*feitelijke handelingen*) issued by the General Election Commission, the settlement is carried out through a trial as explained previously. However, if the violations do not cause harm to other parties (Election Participants), but only ordinary administrative violations, then there is no need for a trial mechanism, only direct sanctions. This is in accordance with government regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials.

Conclusion

This research concludes that the concept of law enforcement on electoral administrative violations is not in accordance with the concept of law enforcement in administrative law, so that, in practice, it creates many legal problems including conceptual problems and technical problems. Then, the appropriate new design to correct the errors in the concept of the administrative violations is to adjust it to the concept of administrative law by classifying it based on the characteristics of the violations and the legal subject who committed the violation.

Based on the results, analysis, and conclusion of this research, the following recommendations can be made: first, a clear division between violations that contain administrative disputes and that do not contain administrative disputes needs to be made; second, it is required to change the mechanism for administrative election violations as regulated in Article 461 paragraph (1) of the Election Law, by guiding the concept of administrative law enforcement and the expansion of the objects of administrative disputes after the issuance of the Government Administrative Law.

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