



A LEGAL ANALYSIS OF CHARACTERISTIC DECISION OF THE ELECTION HONORIC COUNCIL

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Abstract: *This study aims to find out characteristic decision of the Election Honoric Council (DKPP) which is final and binding as well as can understand meaning is final and binding for election administrators. This writing uses normative method with statue approach, and conceptual approach. Based on writing is obtained that DKPP is Justice Ethics Institution for election organizers. Position from DKPP is State Auxiliary Organs, or Auxiliary Institutions that are support for balance and monitoring KPU and Bawaslu performance in organizing election general. The nature of the DKPP decision issued namely final and binding for the institutions holder power that is President, KPU, Provincial KPU, Regency/City KPU, Bawaslu, Bawaslu Province, Bawaslu Regency/City and is decision KTUN officials who have final, concrete, individual character that can enter become object Administrative Court claims or disputes.*

Keywords: *Code of Ethics; Characteristic Decision; The Election Honoric Council*

I. INTRODUCTION

The general election is a democratic political process in which voters exercise their right to elect representatives who will serve as their voice in government. The general election has significant importance in a democratic society as it offers individuals the opportunity to exercise their right to participate in the electoral process, so enabling them to elect political representatives, make decisive choices, and uphold the basic ideals of democracy. The general elections in Indonesia are governed by law, and there are accountable organisations entrusted with the task of conducting the electoral process. In order to ensure the organisation of general elections and the maintenance of fair and honest electoral processes, three institutions play a crucial role. These institutions are the Commission General Election (KPU), the Election Supervisory Body (Bawaslu), and the Honorary Council Election Organisers (DKPP). Together, they form a unified entity that works towards the realisation of fair and honest elections. The establishment of the third institution (KPU, Bawaslu, DKPP) is stipulated in Law Number 7 of 2017 regarding General Elections (hereinafter referred to as Law No. 7/2017). This law outlines the allocation of responsibilities and authorities among these institutions, which are

interconnected due to their shared role as organisers and their respective functions¹. Given the interdependence between these entities, it is imperative for the third institution to uphold principles of integrity and equity. The fulfilment of requests for independence and impartiality of election organisers is a constitutional requirement².

The maintenance election, which is conducted by the KPU as authorised by Law No. 7/2017, is a general election. The execution of general elections does not operate in isolation; rather, it requires oversight to ensure the preservation of the electoral process. In this regard, the presence of an independent institutional entity is crucial to supervise the performance of the KPU. This entity is known as the Bawaslu. The General Election organised by the KPU is conducted under the direct supervision of Bawaslu. Hence, inquiries emerge about the existence of violations perpetrated by the two key institutions responsible for organising general elections, namely the KPU and the Bawaslu, which possess the authority to address and investigate reported instances of breaches. A new institution has been established to address and adjudicate complaints and/or reports regarding potential violations of the code of conduct by members of the KPU, Provincial KPU members, Regency/Municipal KPU members, members of the Election Supervisory Board (Bawaslu), members of the Provincial Bawaslu, and members of the Regency/City Bawaslu. This institution is known as the DKPP, and it operates independently to fulfill its objectives. The primary responsibility of DKPP is to analyse and make determinations on violations of the code of ethics by election organisers, while also imposing suitable punishments. According to the provisions outlined in Article 159, paragraph (1) of Law no. 7/2017, the DKPP is assigned with the following responsibilities:

- a. the acceptance of complaints and/or reports on claims of violations of the code of ethics by election organisers is acknowledged; and
- b. conduct thorough investigations and verifications, as well as inspections, on complaints and/or reports pertaining to claims of violations of the code of ethics by election organisers.

According to Article 159, paragraph (2) of Law no. 7/2017, the DKPP is vested with the power to:

- a. call suspected election organizers do violate code ethics for providing explanations and defenses;
- b. call complainants, witnesses, and/or other related parties for questioning, including for questioning documents or other evidence;
- c. sanction Proven election organizers violate code ethics; and
- d. disconnect violation code ethics.

¹ Dyan Puspitasari, "Peran Dewan Kehormatan Penyelenggara Pemilu Dalam Menjaga Kemandirian Dan Integritas Pemilihan Umum Di Indonesia," *Lentera Hukum* 5, no. 3 (December 31, 2018): 380, <https://doi.org/10.19184/ejhl.v5i3.5841>.

² Ahmad Izzudin, Ratna Herawati, and Lita Tyesta Addy Listya Wardhani, "Implikasi Putusan Dewan Kehormatan Penyelenggara Pemilu Berdasarkan Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum Terhadap Proses Pemilu," *Diponegoro Law Journal* 8, no. 1 (January 2019).

In order to safeguard the sovereignty of the people, the execution of general elections must be grounded in the principles of freedom and fairness. The administration of public elections in Indonesia involves the execution and oversight of the process by the KPU and the supervision of election organisers by the Bawaslu. To ensure the integrity of the election, it is crucial for the DKPP to play a supervisory role in monitoring the conduct and behaviour of KPU and Bawaslu members. The DKPP conducts a thorough examination and investigation of complaints and/or reports of violations filed by aggrieved parties regarding actions committed by Election Organisers. This process involves a series of procedures that have been established by the DKPP. If it is proven that the Election Organisers have violated the code of ethics, the DKPP has the authority to make decisions regarding the violation of the code of ethics by the Election Administrators³. This study aims to find out characteristic decision from DKPP which is final and binding as well as can understand the meaning is final and binding for the organizer's election. This research uses method normative, with use statue approach and conceptual approach.

II. DISCUSSION

Position of DKPP

The institution responsible for organising the General Election is known as the Public Election Organiser. This institution comprises the Election Commission (KPU), the Election Supervisory Body and the Election Dispute Settlement Agency (DKPP). Together, they function as a unified administrative body for the General Election, which aims to facilitate the voting process for the selection of members of the People's Representative Council (DPR), the Regional People's Representative Council (DPRD), the Regional Representative Council (DPD), as well as the President and Vice President. These positions are directly elected by the people. DKPP is an entity responsible for organising elections, with its primary responsibilities and activities revolving around addressing violations of the code of ethics committed by election organisers. In its early stages, the DKPP did not have a common practise of organising institutional elections. However, as a result of its responsibilities and roles in overseeing general elections for individual organisers, the DKPP has been closely associated with the organisation of institutional elections. The DPP, along with two other election organisers, namely the KPU and Bawaslu, is an institutional entity that is either organic or established based on regulatory provisions. This is in accordance with the Constitution Number 15 of 2011, which pertains to the General Election Organiser, commonly referred to as Law No. 15/2011. It is important to note that this law has been subsequently incorporated into Law No. 7/2017. The DKPP institutions might be characterised as State Auxiliary Organs or Auxiliary Institutions, functioning as supportive entities inside the state apparatus. The

³ Muhammad and Teguh Prasetyo, *Eksistensi DKPP RI Dalam Mengawal Demokrasi Dan Pemilu Yang Bermartabat* (Depok: RajaGrafindo Persada, 2018).

preservation of DKPP independence is crucial as it has significant implications for the effectiveness of the legal system and the promotion of democratic principles⁴.

The objective of enforcement collection legislation is to restrict and safeguard the use of authority within defined limits, while upholding the idea of checks and balances. It may be inferred from this statement that the establishment of the DKPP was intended to serve as a mechanism for ensuring equilibrium and oversight of the KPU and Bawaslu's performance in conducting general elections. Hence, the primary responsibility of the DKPP is to receive and examine incoming complaints or allegations pertaining to alleged breaches of the Code of Ethics by the election organizer's general. The enforcement of the aforementioned Code of Ethics is already in place by the enactment of Constitution Number 22 of 2007, which pertains to the regulation of the Organiser General Election, often referred to as Law No. 22/2007. However, under its previous designation as the Honour Council Commission General Election, also known as DKKPU, it functioned as an ad hoc or temporary body without dedicated facilities or robust legal framework to support its operations. Consequently, the establishment of the DKPP was undertaken with the purpose of establishing a permanent institution responsible for overseeing the fair conduct of general elections. According to Law no. 7/2017, the DKPP is an institution of a fixed type that is incorporated into the Election Organiser institution located in the capital city of the state. The establishment of the DKPP was intended to address and adjudicate complaints and/or allegations about potential violations of ethical codes committed by election organisers, notably the KPU and Bawaslu, during the execution of elections. The user has reported and expressed concerns on potential violations of ethical conduct allegedly committed by several entities, including: (1) members of the KPU, (2) members of the KPU, (3) members of the Regency/City KPU, (4) members of the Bawaslu, (5) members of the Bawaslu, and (6) members of the Regency/City Bawaslu.

According to Article 109, paragraph (2) of Law number. 15/2011, which has been repealed by Law no. 7/2017, the DKPP is vested with the power to investigate, arbitrate, and make decisions on complaints and/or reports on alleged violations of the code of ethics by members of the Election Administrator. The authority of DKPP in Law number. 15/2015 introduced a modification to the interpretation of the term "to judge," although Law no. 7/2017 does not make any reference to this word. Nevertheless, it is important to acknowledge that the DKPP no longer functions as an organisation that upholds and enforces ethical standards. In other words, the DKPP no longer serves as a bastion of justice and ethics for members of election organisers who have violated ethical principles in the electoral process⁵.

⁴ Alfryni Halawa and Ukas, "Eksistensi Dewan Kehormatan Penyelenggaraan Pemilu (DKPP) Dalam Penegakan Etika Penyelenggara Pemilu Di Kepulauan Riau," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 7 (2022).

⁵ Muhammad and Prasetyo, *Eksistensi DKPP RI Dalam Mengawal Demokrasi Dan Pemilu Yang Bermartabat*.

In accordance with the roles, responsibilities, and powers outlined in the DKPP also known as the Election Supervisory Agency, the primary objective is to ensure the proper conduct of elections in a way that upholds democratic principles. The DKPP, along with election organisers, should be vigilant in monitoring behaviour during elections, since it is an entity that serves as the unified election administrator. The DKPP performance in managing institutions and providing support involves compiling and determining code etiquette to ensure the independence, integrity, and credibility of members from various institutional Election Organisers. These organisers include members from the KPU, Provincial KPU, Regency/City KPU, PPK, PPS, KPPS, PPLN, KPPSLN, Bawaslu, Bawaslu Province, Bawaslu Regency/City, Panwaslu District, Panwaslu Kelurahan/Village, Panwaslu LN, and TPS Supervisor. During the code drafting process, the compilation of ethics involves not only the DKPP, but also other organisations such as the KPU and the Bawaslu.

Institutions offering options for election organisers prioritise the establishment of a code of ethics. The primary objective is to ensure synchronisation and not just limited to that, but also to serve as a guiding principle in maintaining a balanced relationship between the institution and election organisers. Additionally, this code of ethics serves the purpose of fostering unity in the execution of election processes. The code of ethics, developed by the DKPP, encompasses the binding characteristics of KPU and Bawaslu, which are obligatory for members of the Election Administrator to adhere to. In order to fulfill their responsibilities and obligations in enforcing ethical codes during elections, the Election organisers, DKPP, establish rules and determine decisions via the formulation of DKPP regulations and the stipulation of DKPP's decision.

The presentation highlights the fact that DKPP serves as a unified entity responsible for organising elections, with the KPU and Bawaslu. These entities are entrusted with the tasks, responsibilities, and authorities to oversee the conduct of Election Organisers who may be in breach of ethical codes.

Duties and Authorities of DKPP

The DKPP, which is no longer ad hoc in character, was established by the President of the Republic of Indonesia with the purpose of serving as an election management organisation. Its primary objective is to address and resolve issues pertaining to the code of ethics in elections. The DKPP is committed to fulfilling its mandate. According to Article 159 letters a and b of Law no. 7/2017, the DKPP is responsible for receiving complaints and/or reports regarding alleged violations of the code of ethics committed by election organisers. The DKPP is also responsible for conducting investigations, verifications, and inspections related to these complaints and/or reports of alleged violations of the code of ethics committed by election administrators. The suit mandate regulation outlined in the Constitution pertains to the process of filing complaints with the appropriate Director of Public Prosecutions (DPP) over breaches committed by the Election Organiser. This process may be initiated by election candidates, campaign teams, the public, and/or

voters, as well as by the election organisers themselves. The DKPP has granted authorization to summon individuals suspected of violating the code of ethics in relation to election organisation. This authorization allows for the provision of explanations and defences by the accused, as well as the questioning of reporters, witnesses, and other relevant parties. These individuals may also be requested to provide documents or other forms of evidence. In cases where election organisers are found to have violated the code of ethics, appropriate sanctions will be imposed, including the termination of their involvement in the electoral process. DKPP is required to adhere to values that promote justice, independence, impartiality, and transparency. They must enforce ethical guidelines or norms that are applicable to election organisers. DKPP should keep a neutral and passive stance, refraining from exploiting any cases for personal popularity. Furthermore, they are responsible for communicating their decisions to the necessary parties for further action. The execution of the responsibilities and tasks in the enforcement of election laws by the Election organisers is conducted in accordance with the mandate outlined in Law no. 7/2017. The DKPP, in its capacity, has been given autonomy from DKPP rules and is also allowed to issue decisions by the DKPP. The tree issue, which falls within the jurisdiction of the DKPP, does not pertain to problems related to the election process itself, such as the determination of election results or decisions made by the KPU and/or Bawaslu committees or officials. Engaging in illicit activities violates the ethical rule of conduct for election administrators.

Furthermore, the DKPP was granted the power to issue written warnings, suspend, or dismiss election organisers who are being investigated and analysed for solid evidence of violating the code of ethics for election administrators, as determined by the decision made⁶. According to the presence of strong and effective decisions made by the Election Commission is anticipated to enhance the accountability and responsibility of election organisers in fulfilling their obligations. This, in turn, is predicted to improve the overall quality and accountability of the electoral process⁷.

The Characteristic Decision of DKPP

The DKPP serves as a framework for ethical conduct in the justice system, specifically in relation to the enforcement of ethical codes and the identification of violations by members of election organisers. Its role is primarily focused on facilitating the effective functioning of enforcement mechanisms. In essence, the DKPP can be seen as a guiding document that helps ensure the smooth operation of election organisers, with the KPU and Bawaslu acting as the primary entities responsible for overseeing their activities. The establishment of the DKPP is primarily intended to safeguard the integrity of election organisers, ensuring their constant adherence to statutory rules. Additionally, it strives

⁶ Surawijaya, Galang Asmara, and Rr Cahyowati, "Akibat Hukum Putusan DKPP Terhadap Penyelenggara Pemilu (Studi Pelaksanaan Putusan Nomor:317-Pke-Dkpp/X/2019)," *Jurnal Education and Development* 10, no. 1 (January 2022).

⁷ M. Lutfi Chakim, "Desain Institusional Dewan Kehormatan Penyelenggara Pemilu (DKPP) Sebagai Peradilan Etik," *Jurnal Konstitusi* 11, no. 2 (May 20, 2016): 393, <https://doi.org/10.31078/jk11210>.

to protect the honour of the institution of election organisers and preserve the independence of election administrators.

In the broader framework of enforcing ethical standards in maintenance elections, the DKPP judgement exhibits numerous distinct features. The decision of the DKPP is a consequence of the inspection procedure pertaining to violations of ethical codes and the conduct of the election administrator. The DKPP decision has distinct qualities in terms of its administration and disciplinary aspects. *First*, the emphasis of DKPP is centred on behaviours that contravene the ethical standards and code of conduct established by election organisers. This agency is responsible for the inspection and disconnection of problems relating to violations. The DKPP ruling lacks the legal force to affect changes in the legal status or criminal penalties for the persons concerned. The DKPP judgement has significant consequences for the administration and disciplinary actions of election officials⁸. *Second*, the DKPP ruling has considerable political implications. Although lacking legal enforceability, the DKPP judgement has the potential to serve as a moral and political benchmark for both election organisers and the general public in a wide-ranging way. The ruling of the DKPP has had an impact on the public's thoughts and impressions about the integrity and professionalism of the election organisers engaged in the reviewed incidents. Consequently, the choices made by DKPP often attract significant media and public scrutiny, thus exerting an impact on the reputation and professional trajectory of the election organisers implicated⁹.

As a proficient election administrator, both permanent and independent, responsible for the execution of elections that prioritise principles of directness, generality, freedom, confidentiality, honesty, and fairness, the existence of the DKPP ensures the safeguarding of the integrity and credibility of the election administration process. The competence of the DKPP in determining violations of the code of ethics, as stipulated in Law no. 7/2017, is of a delegated character. Authority delegation refers to the act of transferring the power to establish regulatory laws from higher-level rules to regulations of a comparable or lower level. This delegation may be either expressed or implied, as discussed¹⁰. According to the presence of strong and effective decisions made by the Election Commission is anticipated to enhance the accountability and responsibility of election organisers in fulfilling their obligations. This, in turn, is predicted to improve the overall quality and accountability of the electoral process.

⁸ Evi Noviawati, "Perkembangan Politik Hukum Pemilihan Umum Di Indonesia," *Jurnal Ilmiah Galuh Justisi* 7, no. 1 (March 1, 2019): 75, <https://doi.org/10.25157/jigi.v7i1.2139>.

⁹ UU Nurul Huda, "The Position and Authority of the Election Supervisory Board in Indonesian Constitutional System," *UNIFIKASI: Jurnal Ilmu Hukum* 6, no. 1 (June 26, 2019): 71, <https://doi.org/10.25134/unifikasi.v6i1.1807>.

¹⁰ Dewi Ani Saurrohmah, "Tinjauan Fiqh Siyasah Terhadap Kewenangan DKPP Dalam Penyelesaian Pelanggaran Kode Etik Pemilihan Umum: Studi Putusan DKPP Nomor 23-25/DKPP-PKE-I/2012" (Thesis, Universitas Islam Negeri Sunan Ampel Surabaya, 2019).

According to Article 458, paragraph (13) of Law no. 7/2017, it is stated that the decision mentioned in paragraph (10) is considered to be conclusive and obligatory. The term "final" implies that the decision issued by the DKPP has legal authority and cannot be challenged via the submission of an appeal or objection. This means that the judgement has the power to be enforced and its effects cannot be disregarded. The term "binding" refers to the inherent quality of being forced and obligated to implement decisions made by the DKPP for election organisers and/or institutions with organising authority. The DKPP conducts a thorough examination and administration of complaints and/or reports of violations committed by Election Organisers, following a series of processes. If it is proven that the Election Administrator has violated the code of ethics, the DKPP has the authority to make a decision on the violation of the code of ethics. According to Decision Court Constitution Number 32/PUU-XIX/2021, it is argued that provision Article 458 paragraph (13) of the Law Number 7 of 2017 is in contradiction with the 1945 Constitution of the Republic of Indonesia and lacks legal validity until it is interpreted. The verdict, as stated in paragraph (10), is binding for the President, KPU, Provincial KPU, Regency/City KPU, and Bawaslu. These officials are subject to concrete, individual, and final decisions, which can be the subject of a lawsuit in the Administrative Court (see Judgment Court Constitution Number 32/PUU-XIX/2021).

In essence, it is essential to understand the finality and binding nature of DKPP rulings as applicable to several entities, including the President, KPU, Provincial KPU, Regency/City KPU, as well as Bawaslu, Bawaslu Province, and Bawaslu District/City. The decisions made by the President, KPU, Provincial KPU, Regency/City KPU, and Bawaslu regarding DKPP follow-up are subject to the Decree of the State Administrative Officer (KTUN). This decree is responsible for executing government affairs in accordance with specific, definitive, and legally binding regulations. Consequently, all types of KTUN decisions can be utilised as subjects in the State Administrative Court.

III. CONCLUSION

The presence of a DKPP ruling will provide legal clarity on the status of members of an institution and determine whether the election organisers have violated ethical codes or not. The DKPP has the ability to examine the validity of allegations against a member of the election administration about breaches of the code of ethics. Additionally, the DKPP is responsible for imposing appropriate punishment for any proved violations of the code of ethics. According to Article 458, paragraph (12), of the sound legislation, consequences applicable to election organisers may include a written reprimand, suspension, or dismissal of election administrators. The judgement made by the Honorary Board in the case of Election Organisers (DKPP) differs from the typical binding character seen in the broader context of institutional justice. The decisions made by the DKPP possess a final and definitive character, and they are exclusively binding upon the president, KPU, provincial KPU, regency/city KPU, and Bawaslu, who are responsible for executing the decisions made by the DKPP. The existence of mechanisms to provide checks and balances against DKPP is intact.

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