



Executorial force the election organizer honorary council (DKPP) in adjudicating violations the code of ethics by election organizers

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Abstract

This study aims to explain the causes of the decisions of the Election Organizer Ethics Council (DKPP) which are final and binding cannot be implemented and the nature and characteristics of the ideal. This study uses a normative juridical method with a statutory approach, a conceptual approach and a case approach. The results of this study state that there are several causes for DKPP decisions that are final and binding in nature and cannot be implemented, including the follow-up of DKPP decisions by related institutions through state administrative decisions that can become the object of a lawsuit at the State Administrative Court. The final and binding nature of DKPP decisions is different from final and binding decisions from court decisions in general. In addition, there is confusion about the final and binding nature of the DKPP Decision which is regulated in the law. The DKPP decision is a decision that has a state administration dimension and is recommendation in nature because its implementation requires follow-up through a State Administrative Decree. DKPP decisions should not be final like court decisions, so there is a need for legal remedies to correct decisions, considering that in practice there are mistakes and errors in DKPP decisions. The meaning of DKPP decisions which are binding needs to be explained in statutory provisions, where the decision can only be declared binding when the Defendant does not use his opportunity to take legal action against the decision.

Keywords: The election organizer honorary council (DKPP), code of ethics, election organizers

Introduction

The Election Organizer Honorary Council (DKPP) is an election organizing institution that perform function semi-judicial, especially adjudicating ethics of election organizer.

^[1] DKPP was formed to maintain independence, credibility, integrity and enforce code of ethics for election organizer. The existence of DKPP as a supporting state institution that not directly related to the implementation of election, raises various problem in the exercise of authority. One of the problem in the implementation of the DKPP authority in adjudication the code of ethic for election organizer is the executory power of DKPP decision that are final and binding. Article 458 paragraph 13 of Law Number 7 of 2017 concerning General Elections states that: "The decision as referred to in paragraph (10) shall be final and binding". The decision of DKPP final and binding is decided based on research and verification of complaint, listening to defenses and witness statement and considering evidence other.

The scholar have different opinion on the meaning of the DKPP decision which final and binding.

According Jimly Asshiddiqie, the DKPP decision is final, which means that there is no other legal remedy after the enactment of the DKPP decision or since the decision is pronounced and ratified in session held open to the public.

^[2] Jimly Asshiddiqie stated that is coercive decision that binds all state institution including judicial bodies that are obliged to implement the decision. So the General Election Commission (KPU), the Election Supervisory Board (Bawaslu), the Government and other relevant institution are obliged to follow up on the DKPP decision ^[3] with release the State Administrative Decree in accordance with its level.

In addition, the Decree of the President, the General Election Commission, the Provincial General Election Commission, the District/City General Election Commission, and the Decision of the General Election Supervisory Board are concrete, individual and final decision of State Administrative official that can be the object of a lawsuit in the State Administrative Court.^[4]

In practice, DKPP decision can't apply immediately, because the follow-up of the decision through the State Administrative Decision is challenged to the State Administrative Court (PTUN). There are several DKPP Decision have been followed up by related institution in the form of State Administrative Decisions which are used as objects dispute in the State Administrative Court (PTUN).

The first, the decision of case Number 317-PKE-DPP/ X/ 2019 filed by Hendri Makalasc, against one of the member General Election Commission, namely Evi Novida Ginting.

^[5] The DKPP decision imposed sanction on the General Election Commission member and President followed up the DKPP decision published Presidential Decree Number 34/P of 2020 which stipulated the dishonorable dismissal of a member of the General Elections Commission named Evi Novida Ginting Manik. Second, the decision of case Number 41-PKE-DKPP/III/2019 which examined and decided a complaint against the Chairman of the Pematangsiantar City Election Supervisory Board. In his decision, DKPP stated that granted the Complainant complaint in its entirety. Against the decision, the Respondent filed a lawsuit at the Jakarta State Administrative Court (PTUN) which in its decision states the petitioner's claim is inadmissible. Third, Case Decision Number: 123-Pke-Dkpp/X/2020 The Honorary Board of Election Organizers examined and decided the complaint

case against Arief Budiman who is the Chairman of the General Elections Commission. Against the decision, Arief Budiman and Evi Novida Ginting Manik conducted a judicial review of Article 458 paragraph (13) of Law Number 7 of 2017 to the Constitutional Court.

Based on these case, there are problem related to implementation of the DKPP authority as a (rule of ethics) court in adjudication violation of election administration ethics. DKPP as a new institution complement of election organizers is a semi-judicial or quasi-judicial institution, especially in the field of ethics for election organizers. The nature of DKPP decision that are final and binding is different from court decision which are part of judicial power, but DKPP implement to judicial function so that every decision must be able to provide legal certainty related to ethical violations committed by election organizer.

In addition, that problem implementation DKPP decision in prosecuting violations of election organizer ethics which due to the absence of clear and concrete regulation governing the size and parameter of DKPP in prosecuting violations of the election organizer's code of ethics. This causes there is no clear boundary between the rule of ethics and the rule of law. In the rule of law, every exercise of authority and court decision must provide legal certainty based on law and regulation, justice and propriety. Authority is a legal power to implement certain action based on law and regulation.^[6]

Introduction

This study used normative juridical methods. In normative juridical research, against several approach. The approach used in this study is the statutory approach, conceptual approach and case approach. The statutory approach is used to analyze regulation related to legal issues.^[7] The statutory approach used to determine legal issues of the decision Election Organizing Honor Board (DKPP) which is final and binding in adjudication violations of election organizer ethics. The conceptual approach used to explain the nature and ideal characteristic decision of the Honorary Board of Election Organizers in adjudication violations of election organizer ethics. This study also used a case approach to explain the causes of the decision of the Election Organizing Honor Board (DKPP) which final and binding can't be implemented. In this study, collecting data through library research. The analysis was execute using qualitative methods on primary, secondary and tertiary legal materials.

Results and Discussion

The Nature and Characteristics of DKPP Decisions that Final and Binding

In implementation judicial functions, DKPP is based on DKPP Regulation Number 1 of 2021 concerning the Second Amendment to DKPP Regulation Number 3 of 2017 concerning Procedural Guidelines for the Code of Ethics for General Election Organizers. In the regulation, DKPP implement functions in procedural law to conduct, receive and verify (formal and material) complaint and conduct hearings on the code of ethics for election organizers. The trial for violations of the election organizer code of ethics was excise on complaint of alleged violations of the code of ethics committed by election organizers, where in the session the DKPP explored the problem in depth to find facts related to alleged violations. In finding facts, DKPP

involves complainants, complainants, witnesses, related parties and is supported by various evidence. The end of the judicial process carried out by the DKPP will give birth to a verdict.

Although DKPP decision are final and binding, in practice they often can't be enforced by the relevant institution. There are several reasons DKPP decision that are final and binding can't take effect immediately even though no legal remedy can be pursued. Some of the causes are: The first, follow-up of DKPP decision related institutions through state administrative decision can be the object of a lawsuit in the State Administrative Court. There are several election organizer who were found guilty of violating the code of ethics and imposed dismissal sanctions by the DKPP and related institutions, following up the decision by issuing a State Administrative Decree on dismissal and then filing a lawsuit to the State Administrative Court with the object of the lawsuit being a State Administrative Decree.

The second, final and binding nature of DKPP Decision is different from final and binding to court institution decisions. There are difference in final and binding nature of DKPP decision with general court decisions due to two things, namely: a) DKPP does not include judicial power institutions, because DKPP is not a special court under the Supreme Court as stipulated in Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power; b) DKPP as part of the internal apparatus of election administration authorized by law. Given that the final and binding nature of DKPP decisions is not the same as court decisions in general, but the final and binding nature is a form of checks and balances on the implementation of the duties and functions of election organizers in accordance with ethical values.^[8]

Third, there is confusion about the final and binding nature of the DKPP Decision. In the perspective of state administrative law, as an institution that has the task of adjudication violations of the code ethics for election organizers, DKPP part of the executive branch so that the DKPP decision is an executive decision whose nature of the decision must not be final and binding, so there is a mechanism to review the decision through the court institution.^[9]

Fourth, there is mistake in prosecuting violations of the election organizer code of ethics by not clarifying the boundary between violations of law and violations of ethics. Conceptually there is a difference between proving a violation of the law and a violation of ethics. In proving violation of the law, who is seen conformity between action and rules. In proving ethical violation, must be seen the conformity of the action with ethical values. In addition, law enforcement is authoritative which different from ethics which is autonom. So there are action that are declared unlawful and there are actions that violate ethics. Actions that violate the law certainly violate ethics and not all ethical violations violate the law.

Fifth, the decision of the State Administrative Court granted the lawsuit against the State Administrative Decision which was a follow-up to the DKPP Decision. There were several State Administrative Decisions as a follow-up to the DKPP Decisions which were challenged to the State Administrative Court and granted. With the lawsuit granted, the related institution followed up by issuing a new State Administrative Decree that revoked the old State Administrative Decree regarding the dismissal of the

election organizer. The revocation of the State Administrative Decision which is a follow-up to the DKPP decision indirectly also cancels the substance of the DKPP decision which causes the DKPP decision which is final and binding can't be implemented.

Filing a lawsuit against a State Administrative Decision that terminates dismiss as an election organizer is an attempt to obtain justice for the issuance of the State Administrative Decision even though the decision was born as a legal consequence and a follow-up of the DKPP decision, but because the provisions of the law don't provide space for anyone to take legal action against the DKPP decision, the interested party files a lawsuit against the State Administrative Decision which a follow-up to the DKPP decision.

Legal remedy is mechanism regulated by law that provide an opportunity for interested parties to file a lawsuit against a court decision or a decision of an institution that implement a quasi-judicial function so that the decision is corrected due to an fault in application of the law or other fault. In perspective theory of justice, according to Aristotle, there are two forms of justice, namely distributive justice and corrective justice.^[10] Corrective justice is related correcting mistake, so that the opportunity given to the complainant to take legal action against a State Administrative Decision which a follow-up to DKPP decision is part of the application of corrective justice values as general standard for correcting the consequences of actions including the consequences caused from court decision or decision of institution that implementation quasi-judicial functions.

The Ideal Nature and Characteristics of The Election Organizer Honorary Council (DKPP) Decisions

DKPP is one of the election management bodies whose job is to deal with violations of the election administrator's code of ethics. The task is to examine and decide on alleged violations of ethics by the election administration. After implement duties to examine and decide on violations of the code of ethics, DKPP issues decision that are final and binding. The term of "final" and "binding" on decision of judicial bodies or institutions excuse semi-judicial or quasi-judicial functions, are only found in the jurisdiction of the Constitutional Court, the Honorary Council of Election Organizers and the Election Supervisory Board in settlement of disputes over the electoral process. As for the terms commonly used in decisions of general court institution, namely those with permanent legal force "inkracht van gewijsde". According to Jimly Asshiddiqie, this final and binding nature comes from the idea that ethics is a branch of philosophy that broadly discusses something that is good or bad as human behavior.

One of the ethical philosophy according to Jimly is Descriptive Ethics which explain that ethics has a correlation with how good and right behavior who other people thought. So in the system of proving ethical violations of election organizers which is based on ethical standard and the preferences of each enforcer of ethics lies with DKPP.^[11] Jimly Ashiddiqie also stated that the final nature of DKPP decision meant that there was no legal remedy after the decision was pronounced and legalized in a trial which was held open to the public. In the judicial review trial for Law Number 7 of 2017 with Case Number 32/PUU-XIX/2021 held by the Constitutional Court, Topo

Santoso, one of the expert witnesses in the case, stated that his view was related to the final and binding nature of the DKPP decision, that: "The final and binding DKPP decision as stated in Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections has resulted in the absence of a corrective mechanism for the DKPP decision directly by the State Administrative Court (PTUN). Even though the corrective mechanism for a decision in an election is very important to do, bearing in mind that there is always the possibility of errors occurring both in the decision-making process and in the substance of the decision itself".^[12]

Topo Santoso also stated that the final and binding nature of a decision is indeed needed because the settlement mechanism is through a fast process or fast track model, such as resolving election result disputes in the constitutional court.^[13] DKPP decisions which are final and binding are not limited in meaning, thus causing the decision of the State Administrative Court which is a follow-up to the lawsuit against the DKPP decision not being complied with DKPP. There is a mistake DKPP in understanding the existence, nature and function of the decisions of the State Administrative Court, which can cause losses to members of the General Elections Commission and the Election Supervisory Board. This is because DKPP does not consider the decisions of judicial institutions such as the State Administrative Court to be there to review their decisions.

Topo also made a recommendation for DKPP to return being ad hoc institution. According to him, if DKPP becomes a permanent institution, it needs to reorganize its main task which only provides recommendation for the imposition of sanctions for violations of the election organizers' code of ethics. These ad hoc institution can be filled by community leaders, scholars and people with experience as election administrator. Related to DKPP decision, Topo stated that a decision adjudicating a violation of the code of ethics requires an institution that has the authority to correct a decision from DKPP. The institution is the Administrative Court which in administrative law can be stated as a State Administrative decision, so that it can be corrected by the judicial institution.

Even though the DKPP execute quasi-judicial function in the field of elections, the DKPP's decisions affect the ethics of election organizers. The nature of DKPP decisions which are final and binding is often tested through a judicial mechanism at PTUN which results in these decisions not having binding force and not having legal certainty, even though philosophically the DKPP decisions are part of the ethical aspect, so that their testing through administrative justice as a follow-up to State Administrative Decisions is a form of legal intervention against ethics.

So, there needs to be a revision of Law Number 7 of 2017 specifically regarding the final and binding phrase. The DKPP decision can be assessed by the administrative court even though indirectly, through the TUN decision regarding dismissal, the phrase "final" can be omitted and simply contains the word "binding" for the President, KPU and Bawaslu.

In addition, if the phrase "final" requires that DKPP final decision be interpreted as no further legal action, then the norm must be clarified and firm, including in the explanation section by stating "final and binding DKPP decisions cannot be submitted to the judiciary through a

state administrative decree." If it is interpreted that way, the DKPP decision which is final and binding will no longer have legal remedies after the DKPP decision comes into effect and since it is stipulated and pronounced in a plenary session open to the public.

The authority of DKPP in adjudication and deciding on ethical violations of election organizers need to be regulated concretely and clearly between adjudicating ethical violations and legal violations so that abuse of authority can be avoided. the implementation of DKPP authority in upholding the code of ethics of election organizers which has a subjective dimension and its decisions are final and binding. In addition, there is a mistake in understanding violations of ethics and violations of the law, because there is no profession that is not regulated by law, so violations of the law are often interpreted as violations of ethics. One of the mistakes is the overlapping of ethical regulations with the law which in practice occurs in the exercise of authority to adjudicate election organizers' ethical violations.

This is because the authority of the DKPP is related to the administrative law regime which is one of the authorities in elections. One of the ratio decidendi of the Jakarta Administrative Court Decision Number 28 of 2020 states that testing the authority of the DKPP is indeed not a formal dispute over the election process at the Administrative Court, but must be seen within the framework of a combination of administrative law and election law. This is because election problems always have a public law dimension, so that the administrative court has jurisdiction to adjudicate.

DKPP decision which final and binding also conflicts with DKPP own position as an election organizer and not as a judicial institution. Referring to the Constitutional Court Decision Number 31/PUU-XI/2013 and the Constitutional Court Decision Number 115/PHPU.D-XII/2013 which stated that the DKPP as the organizer of elections is part of the state administrative organs, so that institutionally the legal products produced by the DKPP are the products of state administrative decisions, so it is not correct if the decision is final and binding.

The considering that DKPP decision are included in state administrative decision, although they still require follow-up decisions from the President, KPU and Bawaslu, DKPP decisions cannot be interpreted differential so that DKPP decisions directly have legal consequences. The new legal norm regulated in Article 87 letter d of Law Number 30 of 2014 concerning Government Administration which states that state administration decisions, among others, must be interpreted as "final in a broad sense" which in Sema Number 4 of 2016 stated as decisions that have had legal consequences although they still require approval from superior agencies or other agencies so that according to the Petitioners the DKPP decision can be interpreted as "state administrative decisions that can be tested directly in the State Administrative court"

This also contradicts the principle of checks and balances in relations between state institutions where there is no other institution to correct DKPP decisions, including the judiciary. The power that is not controlled has the potential to cause abuse of authority and make the institution a tool of power. This also resulted in DKPP not being held accountable for its decision. In addition, the final and binding nature of the DKPP decision as referred to in Article 458 paragraph (13) of Law Number 7 of 2017

disrupts the relationship of equality and balance between election management bodies due to the emergence of DKPP superiority over other election institutions and distorts the independence of the organizers.

The final and binding nature of the DKPP's decision is also contrary to the principle of the unity of the election administration as referred to in Article 22E Paragraph (5) of the 1945 Constitution because in practice it causes sectoral egos between agencies and the DKPP in adjudicating ethical violations actually exceeds its authority by considering matters outside ethics such as election administration which is the authority of the KPU. ^[14] The DKPP decision is final, so there is no legal remedy for those who feel disadvantaged by the issuance of the decision, indicating a weakness in practice. There have been several DKPP decisions that have dismissed election organizers from their positions, which have actually violated general legal principles, exceeded their authority and contravened statutory regulations. Regarding this decision, the relevant institutions are obliged to follow up on it, considering that the decision is binding for them by issuing a TUN Decree that terminates the election administrator from his position. Given that there is no legal effort to correct the DKPP decision, the party who feels aggrieved has sued the TUN decision to the State Administrative Court.

The correction mechanisms for court decisions and decisions of institutions that carry out quasi-judicial functions are fundamental in a modern rule of law with the principle of checks and balances with the aim of preventing arbitrariness and realizing a sense of justice and providing protection for citizens' rights. The correction mechanism for the decision can be made to the State Administrative Court through a lawsuit against the State Administrative Decision regarding the follow-up of the DKPP decision, bearing in mind that the DKPP decision only takes effect when there is a follow-up through the State Administrative Decision. In addition, the correction mechanism can also be carried out through legal remedies submitted and examined by the DKPP in a hierarchy, as is the case with legal remedies in general courts.

This mechanism is very relevant considering that what will be assessed is the DKPP's decision directly. This is certainly different from the lawsuit mechanism through the PTUN where the object of the lawsuit is the TUN decision as a follow-up to the DKPP decision, so that what is considered is not a direct DKPP decision. The existence of a legal remedy mechanism is also a manifestation of DKPP's accountability for the decisions it makes, bearing in mind that these decisions are directly related to the rights of citizens to be involved in government which are guaranteed by the constitution.

Conclusion

There are several reasons why DKPP decisions which are final and binding can't be implemented, including. The first, the follow-up of DKPP decisions by related institutions through State Administrative Decisions decision become the object of a lawsuit at the State Administrative Court. The second, the final and binding nature of the DKPP decision is different from the final and binding decisions of court in general. Third, there is confusion about the final and binding nature of the DKPP Decision which is regulated by law. Fourth, there was an error in adjudicating violations of the election organizers' code of ethics by not clarifying the

boundaries between legal violations and ethical violations in their considerations. Fifth, the decision of the State Administrative Court (PTUN) granted the lawsuit for the state Administrative Decision which was a follow-up to the DKPP Decision, causing the Administrative Decision to be revoked and substantively annulling the DKPP decision. The DKPP decision imposing sanctions for violations of the code of ethics by election organizers is a decision that has a state administration dimension and is recommendation in nature because its implementation requires follow-up through a State Administration Decree. The DKPP's decision should not be final like a court's decision, so there is a need for legal action to correct the decision, bearing in mind that in practice there are mistakes and errors in DKPP's decisions. The legal remedy can be carried out through a hierarchical mechanism proposed and decided by the DKPP or through an administrative lawsuit mechanism to the State Administrative Court.

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