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# Independence of The Honorary Board of Election Organizers After The Constitutional Court Decision No. 32/PUU-XIX/2021

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## Abstract

This study aims to find out what the independence and integrity of the Honorary Board of Election Organisers (DKPP) are after the enactment of Constitutional Court Decision No. 32/PUU-XIX/2021. After the enactment of the Constitutional Court Decision No. 32/PUU-XIX/2021, DKPP experienced problems related to its independence, including limited authority, lack of independent supervisory functions, rampant political intervention. All of these problems affect DKPP's role in carrying out its duties as a supervisor of election administrators. It is crucial to keep in mind that even with the changes in the DKPP's jurisdiction following the Constitutional Court's ruling, the organisation's responsibility as a defender of morality and integrity in election administration is still crucial to maintaining a free, transparent and democratic electoral process. This research uses normative juridical research methods, with a library research approach. To obtain secondary data related to this title so that valid and accountable data can be obtained, the approach used in this research is the statute approach. The findings of this research support the decision of the Constitutional Court No. 32/PUU-XIX/2023 which cancelled Article 458 paragraph (13) of Law No. 7/2017. This makes the decision of the Election Organiser Honour Council legally binding as a concrete, unique, and final decision made by a state administrative official, which can be challenged in the state administrative court. This decision has legal consequences because it confirms the final and binding nature of the Election Organiser Honour Council, which distinguishes it from judicial decisions; and opens up the possibility of testing the decision of the DKPP through the State Administrative Dispute procedure at the State Administrative Court.

**Keywords:** Constitutional Court Decision; Honorary Board of Election; Indendence;

## 1. INTRODUCTION

The Honorary Council of Election Organizers, also known as DKPP, is an organization established with the main purpose of overseeing and balancing the activities of the Election Supervisory Body, its employees, and the General Election Commission.<sup>1</sup> In addition, DKPP is required by Law No. 7/2017, to fulfill its role as an organization that handles ethical violations committed by election administrators.

The research conducted by M. Lutfi Chakim concluded that the open trial model is usually used in carrying out the responsibility of enforcing the Code of Ethics at DKPP. In addition, in carrying out its responsibilities, DKPP has a structure like an ethics court, with all the same rules and regulations as courts in general. DKPP's decision is final and binding on the parties because it works like a court in general. This is based on the absence of legal efforts to cancel DKPP's decision, considering that DKPP is the only institution responsible for enforcing the election code of ethics.<sup>2</sup>

Furthermore, Muhammad Syaefuddin's research reveals that in order to develop and improve the level of integrity and quality of elections, the issue of the integrity of election

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<sup>1</sup> Sigit Pamungkas, *Perihal Pemilu, Laboratorium Jurusan Ilmu Pemerintahan Dan Jurusan Ilmu Pemerintahan Fisipol UGM*, Cet. Perta (Yogyakarta: Fakultas Ilmu Sosial dan Politik Universitas Gadjah Mada, 2009).

<sup>2</sup> M. Lutfi Chakim, "Desain Institusional Dewan Kehormatan Penyelenggara Pemilu (DKPP) Sebagai Peradilan Etik," *Jurnal Konstitusi*, 11, no. 2 (2016): 393–408, <https://doi.org/10.31078/jk11210>.

organisers should be a serious concern. EMBs should develop electoral ethics and establish ethical institutions to maintain their independence, credibility and integrity. This is part of the effort to build their integrity.<sup>3</sup>

After the Honorary Council of Election Organisers was established, it has operated under the tenets of conducting elections in an honest and ethical manner, particularly when it comes to addressing electoral infractions. This is consistent with the findings of Mudiwati Rahmatunnisa's research.<sup>4</sup>

This research has looked at three earlier studies, including one by Muhammad Syaefudin (2018). During his research, Syaefudin discovered evidence of electoral irregularities in the DPRD member election. In order to restore the DPRD candidates' constitutional rights, the DKPP ordered the KPU to perform a review, therefore resolving the matter. In closing, Syaefudin emphasized that the KPU should make the decision, not the DKPP.

Moreover, studies carried out by Andriansyah (2023) verify that the DKPP is not an original purpose ethical court. This is due to the fact that the DKPP is not a court system but rather a governmental administrative agency. The ruling number. 115/PHPU-D-XI/2013 of the Constitutional Court supported Andriansyah's assertions.<sup>5</sup>

Firda Arifatuzzahrah's research from 2024, which forms the basis of her explanation, ultimately shows that the DKPP's judgment is only a proposal since it is subject to appeal at the PTUN, as per the Constitutional Court's No. 32 / PUU-XIX / 2021 ruling. With this ruling, the Constitutional Court invalidated the DKPP's final conclusion.<sup>6</sup>

The three main institutions responsible for overseeing elections in Indonesia are the General Election Commission (KPU), the Election Supervisory Agency (Bawaslu) and the Election Organiser Honour Board (DKPP). M. Imam Nasef's paper also contains data showing that DKPP has successfully resolved 217 cases in the two years after the inauguration. Apart from being resolved and sanctioned for violations of the code of ethics, the 217 cases here mostly revolve around the implementation of elections.<sup>7</sup>

The DKPP continues to exercise its authority to resolve cases of ethical violations by referring to previous studies. However, the DKPP's function as an ethics court has actually been diminished by changes in the legal status of the decision following the Constitutional Court ruling.

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<sup>3</sup> Muhammad Syaefudin and Kadi Sukarna, "Kewenangan Dewan Kehormatan Penyelenggara Pemilu ( DKPP ) Dalam Menegakan Kode Etik Pelanggaran Pemilihan Umum," *Jurnal USM Law Review* 1, no. 2 (2018): 104–20, <https://doi.org/10.26623/julr.v2i1.2261>.

<sup>4</sup> Mudiwati Rahmatunnisa, Siti Witianti, and Hendra Hendra, "Evaluasi Kinerja Dkpp Dalam Penanganan Kasus Pemilukada Serentak Jawa Barat Tahun 2015," *Jurnal Wacana Politik* 2, no. 2 (2017): 148–55, <https://doi.org/10.24198/jwp.v2i2.14419>.

<sup>5</sup> Andriansyah and Muthia'ah Maizaroh, "Rasionalisasi Putusan DKPP Sebagai Objek Pengujian Di PTUN," *Nomokrasi* 1, no. 1 (2023): 56–67.

<sup>6</sup> Firda Arifatuzzahrah and Irham Bashori Hasba, "Kepastian Hukum Putusan Dewan Kehormatan Penyelenggara Pemilu Terhadap Pelanggaran Kode Etik Penyelenggara Pemilu," *USM Law Review* 7, no. 1 (2024): 70–83, <https://doi.org/10.26623/julr.v7i1.7997>.

<sup>7</sup> M. Imam Nasef, "Studi Kritis Mengenai Kewenangan Dewan Kehormatan Penyelenggara Pemilu Dalam Mengawal Electoral Integrity Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 21, no. 3 (2014): 378–401, <https://doi.org/10.20885/iustum.vol21.iss3.art3>.

Overall, there are several reasons why this research is important. First of all, the DKPP is the only organisation in the world that considers an ethical legal system to be an integral part of election organisers. It's fascinating to see the procedures that go into keeping election organisers legitimate, neutral and honest. This is because it gives the election organisers - their own constituency - new optimism to raise the bar for elections. Secondly, DKPP is a relatively new scientific concept that integrates the ideology of restorative justice.<sup>8</sup>

This is evidenced by DKPP's performance in resolving cases of violations of the election code of ethics. Overall, DKPP has decided 1,873 cases between 2012 and 2021 and imposed the following sanctions on election organisers: 4,005 people were rehabilitated; 2,518 people received written warnings; 69 people were temporarily dismissed; 671 people were permanently dismissed; 72 people were dismissed from their positions; and 270 people were sentenced. 7,605 election organisers is the total number of complainants who have been decided by DKPP 2012-2021 (data as of June 11, 2021).<sup>9</sup>

The legal power of the DKPP's rulings is still significant in the context of upholding the election organizers' integrity and code of ethics following the Constitutional Court of Malaysia's decision, which had an impact on the organization's structure and authority. The DKPP continues to play a significant role in upholding moral principles and excellence in election administration, even in the face of modifications to the electoral body's organizational structure.

Decisions made by the DKPP have executorial power, which means that the KPU or Bawaslu or other appropriate authorities must carry out the sanctions that the DKPP has issued. Furthermore, even though DKPP rulings can be immediately put into effect, parties who disagree with the decision have the option to petition the State Administrative Court for a review.

Based on the above background, this research argues that it is necessary to further investigate the duties and powers of the DKPP (Honorary Board of Election Organizers) after the Constitutional Court Decision Number 32/PUU-XIX/2022. The purpose of this research is to examine the reasoning used by the Constitutional Court when deciding whether the Honorary Council for Election Management has the authority to administer elections. Analysing the decision could have an impact on the position of the Honorary Council of Election Administrators as a key institution in the management of elections.

## 2. METHOD

This research is normative juridical by conducting a study of secondary data.<sup>10</sup> This research typology is prescriptive analytical, namely research that aims to provide suggestions and alternative solutions in overcoming a problem. In this study, the resolution

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<sup>8</sup> Jimly Asshidiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi : Serpihan Pemikiran Hukum, Media Dan HAM*, ed. Zainal A.M. Husein, vol. 2 (Jakarta: Konstitusi Press, 2009), [http://mitrahukum.org/wp-content/uploads/2012/09/Pilar\\_Demokrasi.pdf](http://mitrahukum.org/wp-content/uploads/2012/09/Pilar_Demokrasi.pdf).

<sup>9</sup> Zulkifli Aspan and Wiwin Suwandi, "Analisis Final Dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilihan Umum," *Japhtn-Han* 1, no. 1 (2022): 92–104, <https://doi.org/10.55292/japhtnhan.v1i1.28>.

<sup>10</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

to be sought is regarding the authority of the DKPP after the Constitutional Court Decision Number 32 / PUU-XIX / 2021.

The law used in this research is categorized into two legal materials, namely primary legal materials consisting of the 1945 Constitution (UUD 1945), Law Number 7 of 2027 concerning general elections. Then in this study also uses secondary legal material which is legal material that explains further about primary legal material in the form of books, legal research reports, scientific journals, tertiary legal material is an explanation of primary and secondary legal materials such as Encyclopedias and legal dictionaries.<sup>11</sup> The method in this study uses a qualitative analysis method which provides data in the form of a description in which the truth of the data or the final premise is determined by the researcher himself.<sup>12</sup>

### 3. RESULTS AND DISCUSSION

#### 3.1 Consideration of the Constitutional Court in decision Number 32 / PUU-XIX / 2021 in relation to the authority of DKPP as an Election Organizer

A democratic system that gives the people control over sovereignty is implemented in Indonesia. In a direct election process, the people choose who will serve in the House of Representatives, the Regional Representative Council, the Regional People's Representative Council, the President and Vice President, the Governor and Deputy Governor, the Regent and Deputy Regent, and the Mayor and Deputy Mayor. This is an example of the people's sovereignty.<sup>13</sup>

The necessity of upholding election organizers code of ethics deviates from the significance of the electoral justice systems.<sup>14</sup> According to the idea of electoral justice, election organizers should not injure or treat unfairly any party participating in the election, including candidate pairs, campaign teams, and members of the public. The necessity of upholding election organizers' code of ethics deviates from the significance of the electoral justice systems.<sup>15</sup> According to the idea of electoral justice, election organizers should not injure or treat unfairly any party participating in the election, including candidate pairs, campaign teams, and members of the public. resolution of any electoral infractions that take place.

<sup>11</sup> Nitaria Angkasa et al., *Metode Penelitian Hukum*, ed. M. Akib, Maroni, and Hamzah, I (Lampung: CV. Laduny Alifatama, 2019).

<sup>12</sup> Patricia Leavy, *Research Design: Quantitative, Qualitative, Mixed Methods, Arts-Based, and Community-Based Participatory Research Approaches* (New York: The Guilford Press, 2017), <https://www.ptonline.com/articles/how-to-get-better-mfi-results>.

<sup>13</sup> Nasruddin Nasruddin, Galang Asmara, and RR. Cahyowati, "Authority of General Election Commission for the Electoral Constitutional Rights," *International Journal of Multicultural and Multireligious Understanding* 6, no. 6 (2019): 97–102, <https://doi.org/10.18415/ijmmu.v6i6.1197>.

<sup>14</sup> Indra Pahlevi, "Lembaga Penyelenggara Pemilihan Umum Di Indonesia: Berbagai Permasalahannya," *Politica* 2, no. 1 (2011): 45–72.

<sup>15</sup> Khairul Fahmi et al., "Sistem Keadilan Pemilu Dalam Penanganan Pelanggaran Dan Sengketa Proses Pemilu Serentak 2019 Di Sumatera Barat Electoral Justice System in Handling 2019 Concurrent Election Violations and Disputes in West Sumatra," *Jurnal Konstitusi* 17, no. 1 (2020): 1–26, <https://doi.org/10.31078/jk1711>.

The DKPP has significant sway over election planning. This is so because DKPP, along with KPU and Bawaslu, is one of the three other election organizers.<sup>16</sup> There will be changes in the responsibilities and powers of the DKPP in the next elections of 2024. Normally, the DKPP has the following responsibilities and powers:

Receiving complaints and/or reports of purported ethical transgressions by election organizers is the responsibility of DKPP.<sup>17</sup> Along with investigating and verifying allegations, DKPP is also responsible for reviewing complaints and/or reports of purported ethical transgressions by election organizers. According to the law, the Election Organizer is subject to all stages of the process of ethical justice, including investigation, verification, and examination.<sup>18</sup> Ultimately, the decision is made by DKPP. The DKPP Decision must adhere to the fundamental rules of court decisions generally, known as *irah-irah*, since it can be implemented as an ethics court in accordance with the law and enforced. The *irah-irah* in this instance is selected: For the Purpose of Justice and the Organizer's Honor. Related parties have the authority to carry out DKPP decisions in order to fulfill their duty to provide justice through follow-up decisions. The party that filed the complaint, the election organizer, and the police in the event of a criminal offense are considered related parties.

Another task following the Constitutional Court's decision number 32 / PUU-XIX / 2021 in the judge's consideration stated that the Court reiterated its position that DKPP is not a court institution and that DKPP, KPU, and Bawaslu are all equal election organizers. The Court further stressed that none of the three organizations in charge of organizing elections has a better position than the other two. Therefore, the Court affirms and reminds all parties involved that the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu are all intended to be bound by the phrase "final and binding" in Article 458 paragraph (13) of Law Number 7 of 2017. Bawaslu is a decision made by state administrative officials that is specific, individual, and concrete.<sup>19</sup>

Based on these considerations, in the judgment, the judge has considered that all DKPP decisions are no longer permanent so that they can be challenged at the PTUN. This is also very influential because every DKPP decision will no longer be a permanent decision later, especially after the Constitutional Court Decision Number 32/PUU-IX/2021.

DKPP examines the decision's conclusion, which essentially says that: Constitutional Court Decision Number 32/PUU-XIX/2021 reaffirms the previous decision Number 31/PUU-XI/2013 that the President, KPU, Provincial KPU, Regency / City KPU, and

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<sup>16</sup> Arifatuzzahrah and Hasba, "Kepastian Hukum Putusan Dewan Kehormatan Penyelenggara Pemilu Terhadap Pelanggaran Kode Etik Penyelenggara Pemilu."

<sup>17</sup> Jejen Fauzi Ridwan, "Peranan Dewan Kehormatan Penyelenggara Pemilu (DKPP) Dalam Menegakkan Kemandirian, Integritas, Dan Kredibilitas Penyelenggara Pemilu Dalam Pemilu Kepala Daerah Dan Wakil Kepala Daerah Tahun 2015," *Journal of Politic and Government Studies* 6, no. 4 (2017): 1–14.

<sup>18</sup> Fahmi et al., "Sistem Keadilan Pemilu Dalam Penanganan Pelanggaran Dan Sengketa Proses Pemilu Serentak 2019 Di Sumatera Barat Electoral Justice System in Handling 2019 Concurrent Election Violations and Disputes in West Sumatra."

<sup>19</sup> Muhammad Junaidi, "Pidana Pemilu Dan Pilkada Oleh Sentra Penegakan Hukum Terpadu," *Jurnal Ius Constituendum* 5, no. 2 (2020): 220–34, <https://doi.org/10.26623/jic.v5i2.2631>.

2 Bawaslu, as direct superiors who have the authority to appoint and dismiss election organizers according to their level, are intended to be bound by the phrase "final and binding" in Article 458 paragraph (13) of Law 7/2017. In opposition to the DKPP Decision, the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu lack the authority to hold an alternative opinion. This is a sample of the legal analysis of the ruling by the Constitutional Court. Furthermore, as a consequence of the Constitutional Court ruling, the State Administrative Court's ruling, which possesses perpetual legal force, also has executorial force and needs to be followed in order to either reinforce or rectify the DKPP Decision.<sup>20</sup>

The President is therefore required to implement DKPP decisions, and Bawaslu and KPU are also required to implement them in accordance with their level of authority. However, as the Constitutional Court noted, there is room for litigation in the State Administrative Court if election organizers feel wronged by the DKPP decision's implementation through administrative decisions made by the President, KPU, and Bawaslu.<sup>21</sup> Because there is no regulation in the legislation, there are conflicting and varying interpretations of the DKPP decision's final and binding clause. Decisions made by the DKPP that are final and enforceable because the laws don't contain any regulations. According to Nofan's article, the DKPP institutionally believes that judicial institutions—particularly the State Administrative Court—are incapable of reviewing or correcting its decisions. However, the State Administrative Court's position is authorized to examine and assess DKPP decisions through Constitutional Court Decisions No. 31 / PUU-XI / 2013 and No. 32 / PUU-XIX / 2021. This is a singular interpretation that cannot be interpreted in any other way.<sup>22</sup> The Constitutional Court's interpretation is consistent with how laws and regulations have evolved to interpret State Administrative Decisions. Additionally, empirical facts provide a means of directly and indirectly testing DKPP decisions. However, the DKPP ruling satisfies the requirements to be a State Administrative Decision that can be contested in the State Administrative Court.

The application filed by two members of the General Elections Commission (KPU), Evi Novida Ginting Manik and Arief Budiman, questioned the phrase 'final and binding' in Article 458 paragraph (13) of Law No. 7/2017. According to the petitioners, the meaning of final and binding in the DKPP's decision makes its decision cannot be interpreted otherwise by the President, KPU RI, Provincial KPU, Regency / City KPU, and the Election Supervisory Body (Bawaslu). In fact, according to Supreme Court Letter (SEMA) No. 4/2016, DKPP decisions are state administrative decisions that can be tested in the

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<sup>20</sup> Maharani Nurdin, "Eksistensi Dewan Kehormatan Penyelenggara Pemilu (DKPP) Dalam Penegakan Etika Penyelenggara Pemilu Di Kepulauan Riau," *Justitia: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 7 (2022): 3293–3300, <https://doi.org/10.31604/justitia.v9i6.3014-3021>.

<sup>21</sup> Nofan, "Pengujian Yudisial Putusan DKPP Di Pengadilan Tata Usaha Negara," *Jurnal Hukum Peratun* 6, no. 2 (2023): 203–28, <https://doi.org/10.25216/peratun.622023.203-228>.

<sup>22</sup> Nofan.

State Administrative Court. The Constitutional Court is of the opinion that the arguments of the petitioners are well-founded according to the law so that they are granted in part.<sup>23</sup>

The KPU and Bawaslu at the regional level are unable to fully utilize their roles because of the extent of the DKPP's authority, which limits their freedom in doing their jobs. The DKPP Decision distorts the independence of the KPU and Bawaslu.<sup>24</sup> The implications of the Decision are not much different from the previous Constitutional Court Decision, but what is interesting in my opinion is that this Decision redesigns the position of the Election Management Institution, especially in terms of checks and balances so that there is no longer a superior institution in organizing elections.<sup>25</sup>

The DKPP enforces the principles of organizer ethics, which include organizing elections and making decisions that are "final and binding" and subject to sanctions such as written warnings, temporary dismissals, permanent dismissals, and rehabilitation. As Jimly Asshiddiqie also said the same thing Final refers to the fact that, following the adoption of the DKPP decision—which was reached in an open plenary session—no other legal remedies remain; binding refers to the fact that the decision is immediately and compellingly binding, obliging all state power organizing institutions, including judicial bodies, to carry out the DKPP decision appropriately.<sup>26</sup>

The Constitutional Court's decision No. 32 / PUU-XIX / 2021, has a positive effect on election organizers' ethics, particularly with regard to the principles of independence, justice, and legal certainty.<sup>27</sup> It is hoped that this decision will be able to heal the division between organizers in the future and foster a more cordial relationship where organizers won't be afraid to make decisions when conducting elections.

Referring to the discussion above, at least it can be concluded that the things considered by the Constitutional Court related to the authority of DKPP include the balance of power, where the Constitutional Court sees this principle between DKPP and other election management institutions. So that the Constitutional Court's decision ensures that DKPP's authority does not exceed the limits set by the applicable laws. The reduction of DKPP's authority in resolving cases of violations of the code of ethics is limited by the Constitutional Court on the basis of protecting human rights. This basis is taken into consideration by the Constitutional Court in order to maintain the political rights of citizens in a democratic country. Effect of supervision effectiveness. The Constitutional

<sup>23</sup> Anonimous, "Mahkamah Konstitusi Tegaskan DKPP Bukan Lembaga Peradilan," Media Indonesia, 2022, <https://epaper.mediaindonesia.com/detail/mahkamah-konstitusi-tegaskan-dkpp-bukan-lembaga-peradilan>.

<sup>24</sup> Erga Yuhandra et al., "Efektifitas Fungsi Pencegahan Badan Pengawas Pemilihan Umum Dalam Melakukan Pelanggaran Pemilu," *Jurnal Ius Constituendum* 8, no. 1 (2023): 1–18, <https://doi.org/10.26623/jic.v8i1.3015>.

<sup>25</sup> Humas Bawaslu Lampung, "Bedah Putusan MK No.32/PUU-XIX/2021, Khoir: Putusan Ini Menjadi Langkah Baru Bagi Penyelenggara Pemilu," Bawaslu Lampung, 2022, <https://lampung.bawaslu.go.id/bedah-putusan-mk-no32puu-xix2021-khoir-putusan-ini-menjadi-langkah-baru-bagi-penyelenggara-pemilu/>.

<sup>26</sup> Harid Fendra, Indah Adi Putri, and Ria Ariany, "Analisis Dampak Putusan Mahkamah Konstitusi Terhadap Etika Penyelenggara Pemilu," *Journal of Social and Policy Issues* 2, no. 3 (2022): 120–29, <https://doi.org/10.58835/jspi.v2i3.8>.

<sup>27</sup> Fendra, Putri, and Ariany; Fahmi et al., "Sistem Keadilan Pemilu Dalam Penanganan Pelanggaran Dan Sengketa Proses Pemilu Serentak 2019 Di Sumatera Barat Electoral Justice System in Handling 2019 Concurrent Election Violations and Disputes in West Sumatra."



Court considers the effectiveness of supervision of election organisers. Whether DKPP's authority is effective enough in handling violations or whether adjustments are needed to improve DKPP's performance. Democratic Principles: The Constitutional Court also considers democratic principles in determining DKPP's authority. This includes ensuring that electoral oversight bodies have sufficient power to protect the integrity and fairness of elections.

The presence of DKPP's existence as a body that follows up on the ethics of election organizers is very necessary in creating healthy elections, so that the electoral process to achieve pure results is not polluted by the behavior of bad organizers, whether from the KPU, Bawaslu or DKPP itself, so that in organizing the elections the organizers can truly fulfill the ethical principles as stated in article 3 of Law number 7 of 2017.

### 3.2 the Credibility of DKPP as an Election Organizing Institution after the Constitutional Court Decision No. 32 / PUU-XIX / 2021

The birth of DKPP on June 12, 2012, was the result of the revision of Law Number 22 of 2007 into Law Number 15 of 2011 concerning election organizers and then again amended by Law Number 7 of 2017. This law provides a mandate to formulate a code of ethics and procedural guidelines at DKPP. Since then DKPP has handled violations of the code of ethics of election organizers based on DKPP Regulation Number 7 of 2017 concerning Procedural Guidelines for the Code of Ethics of Election Organizers. DKPP's working mechanisms and procedures are a translation of DKPP's duties and authorities to uphold the independence, integrity, and credibility of election organizers.<sup>28</sup>

It is anticipated that the DKPP would stop the habit of holding elections that stray as far away from democratic principles as possible. In order to fulfill its constitutional obligations, the DKPP should continue to remind and even fire members of the KPU and Bawaslu if it is shown that they broke the Election Code of Ethics during the General Election process. Direct, general, free, secret, honest, and fair elections are the responsibility of all constituents, especially the Election Organizers.<sup>29</sup>

In the Indonesian electoral administration system, the DKPP is empowered to hear complaints brought forward by Campaign Teams, Election Organizers, Voters, the Public, and/or Election Participants. This gives DKPP the right to call witnesses, complainants, and/or other relevant parties for questioning and to request documents and other proof pertaining to alleged transgressions of the election organizer's code of ethics.

Philosophically, socially, and legally speaking, the DKPP was created as an ethical court that enforces all current legal standards. This is how DKPP functions. The establishment of an ethical court by DKPP is guided by several fundamental ideals, including the "audi et alteram partem" principles and the principles of independence,

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<sup>28</sup> Muchlisin, "Konsep Independent Regulatory Agencies Dalam Kewenangan DKPP Sebagai Lembaga Peradilan Etik," *Tesis* (Universitas Islam Negeri Sunan Ampel, 2021), <https://doi.org/10.19105/asshahifah.v1i1.5883>.

<sup>29</sup> Agus Iptian Dasopang, "Kajian Hukum Putusan Dewan Kehormatan Penyelenggaraan Pemilu Atas Sanksi Pemberhentian Anggota Penyelenggara Pemilu (Analisis Putusan Nomor 317-Pke-DKPP/X/2019)," *Skripsi* (Universitas Muhammadiyah Sumatera Utara, 2021).

impartiality, and transparency. Following these rules will necessitate an open trial where all parties to the case can testify.<sup>30</sup>

A judicial assessment of the phrase "final and binding" in Law Number 7 of 2017 against the 1945 Constitution might be submitted to the Constitutional Court, among other options, to get legal certainty. The Constitutional Court rules in Decision No. 32 / PUU / XIX / 2021, which is based on the Judicial Review results pertaining to this particular phrase, that the DKPP decision can be carried over to the State Administrative Court. This implies that the complainants who receive sanctions can continue to pursue justice and retain their independence in conducting elections, as the DKPP decision cannot be compared to other general courts. The group in charge of elections includes DKPP.<sup>31</sup>

The introduction of the Constitutional Court Decision No. 32 / PUU-XIX / 2021, which establishes new guidelines for DKPP, may or may not boost DKPP's credibility. This decision can be analyzed to determine what will be DKPP's future responsibility after it transfers authority to the State Administrative Court. There will be modifications when considering its responsibilities and authority. But this will undoubtedly improve Indonesian legal processes, particularly since DKPP can concentrate on other duties like receiving reports from Bawaslu exclusively, investigating these reports, and turning into a prosecuting agency rather than a court for electoral infractions.

With the new rules, DKPP will focus on how the methods carried out by DKPP can effectively have an impact on minimizing violations of the code of ethics of election organizers. There are at least two ways that can be done by DKPP so that the number of complaints submitted to DKPP can be significantly reduced. First, is a prevention strategy. Second, is the prosecution strategy. Referring to the duties of DKPP according to Law Number 7 Year 2017, DKPP only has the task of receiving reports of complaints of alleged violations of the code of ethics of election organizers. In addition to the task of receiving and completing the task of resolving cases of violations of the code of ethics of election organizers, DKPP has the authority to prosecute violations of the code of ethics in the field or in this context, in the 2024 elections.

The Election Law confers upon DKPP decisions the status of final and binding. There will be legal uncertainty in the way elections are administered if DKPP decisions are interpreted as final and binding, which is contrary to the Election Law and the DKPP's founding principles.

The Constitutional Court further highlighted that the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu are bound by the phrase "final and binding" in Article 458 paragraph (13) of Law Number 7 Year 2017, which refers to a State Administrative Official's (TUN) decision that is specific, final, and concrete and that may

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<sup>30</sup> Ismail Ismail and Fakhris Lutfianto Hapsoro, "Paradigma Makna Final Dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilu," *Justitia et Pax* 37, no. 2 (2021): 235–50, <https://doi.org/10.24002/jep.v37i2.4312>.

<sup>31</sup> Fendra, Putri, and Ariany, "Analisis Dampak Putusan Mahkamah Konstitusi Terhadap Etika Penyelenggara Pemilu."

5 be the subject of an Administrative Court lawsuit. The Constitutional Court previously decided on this interpretation in Decision Number 32/PUU-XI/2013.<sup>32</sup>

The Constitutional Court, however, reminded all parties involved in the consideration of Decision Number 32/PUU-XIX/2021 that the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu only follow DKPP decisions whose products can be the subject of an Administrative Court lawsuit. This is what is meant to be final and binding for these parties. Therefore, in this particular context, the DKPP decision or a state administrative decision that upholds or corrects the DKPP decision cannot be overruled by the President, KPU, Provincial KPU, Regency / City KPU, or Bawaslu.

With this decision, the KPU and Bawaslu, as the superior institution of the KPU and Bawaslu in the regions, seemed to have a new spirit to follow up on the State Administrative Court's decision which corrected the DKPP decision, if previously the KPU and Bawaslu at the central level had not dared to interpret the DKPP decision differently even though it had been corrected by the State Administrative Court.

Decision No. 32/PUU-XIX/2021 of the Constitutional Court expresses the following opinions: first, despite the opinion that the DKPP Decision's "final and binding" status only binds the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu, it is not understood that the Administrative Court is able to review the DKPP Decision. In the context of the DKPP Decision, binding means that it has to be carried out, naturally requiring the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu to carry it out. The phrase "must be implemented" refers to the executor in the context of trias politica; therefore, the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu are all appropriate because they are executive institutions and the DKPP Decision is binding on them. In this instance, executive must be understood as "nature," not as "position"<sup>33</sup>. This is due to the fact that only the President may be referred to as an executive institution if the executive is understood to be a post. When it comes to the evolution of the idea of trias politica, in actuality, some institutions—in this example, the KPU, Provincial KPU, Regency / City KPU, and Bawaslu—have an executive character, but they are autonomous or do not fall under the President's administrative purview." The Constitutional Court's decision genuinely doesn't get this.

Second, while the Constitutional Court Decision No. 32/PUU-XIX/2021 does not specifically address testing the DKPP Decision as an ethics court through a court of law—in this case, the Administrative Court—it should be interpreted as an attempt to address legal questions pertaining to the "legal vagueness" of the meaning of final and binding in the DKPP Decision. In actuality, this highlights the fact that the Constitutional Court's ruling does not explicitly address whether the Administrative Court Decision may overturn the DKPP Decision and that it is acceptable for both organizations to operate concurrently within their respective purviews—the Administrative Court as a legitimate court

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<sup>32</sup> Fauzi Heri, "Spirit Baru Hubungan Kelembagaan Penyelenggara Pemilu," Detik News, 2022, <https://news.detik.com/kolom/d-6018625/spirit-baru-hubungan-kelembagaan-penyelenggara-pemilu>.

<sup>33</sup> Fradhana Putra Disantara, Bayu Dwi Anggono, and Aan Efendi, "Establishing Ethical Norms: Dignified Justice Theory Perspectives on Ethics and Legal Relations," *Rechtsidee* 10, no. Juni (2022): 1–13.

organization and DKPP as an impartial judicial organization for election organizers. Third, interpreted futuristically and thoughtfully, Constitutional Court Decision No. 32/PUU-XIX/2021 really aims to equalize the status of legal and ethical principles<sup>34</sup>. Nevertheless, the Constitutional Court makes no suggestions in this ruling regarding future developments in the interaction between legal and ethical standards, particularly that between ethics courts and legal courts. Therefore, in order to comprehend the link between legal and ethical norms—which the theory of dignified justice highlights as equal and complementary norms—a thorough study of Constitutional Court Decision No. 32/PUU-XIX/2021 is required.

Because of this, the Administrative Court plays a crucial role in upholding justice and accountability in state administrative proceedings, such as DKPP rulings. Parties who have been wronged can use the Administrative Court's judicial review process to fight for their rights and make sure that judgments made by state institutions are based on the law and the right standards.

After the Constitutional Court's decision on DKPP's authority, DKPP's credibility in resolving cases of violations of the election code of ethics has changed. Here are some factors that can affect DKPP's credibility after the Constitutional Court's decision: *First*, Compliance with the Constitutional Court Decision: DKPP must ensure that its decisions are in accordance with the Constitutional Court's decision. This compliance shows that DKPP respects the authority of the Constitutional Court as a constitutional supervisory institution, which can increase its credibility. *Second*, Transparency and Accountability: DKPP needs to ensure that the process of resolving cases of violations of the electoral code of ethics is carried out in a transparent and accountable manner. This includes providing adequate access to the parties involved in the process and explaining the reasons behind each decision taken. *Third*, Independence and Independence: DKPP must maintain its independence and independence in handling cases of violations of the election code of ethics. This means no intervention from external parties that can interfere with an objective and fair law enforcement process. *Fourth*, Efficiency and Decision Quality: DKPP needs to ensure that the case resolution process is carried out efficiently without compromising the quality of the decision. Decisions made must be based on strong evidence and careful legal considerations. *Fifth*, Increased Capacity and Professionalism: DKPP can increase its credibility by continuously improving the capacity and professionalism of its members. This includes through training and competency development, as well as ensuring that its members understand well their duties and responsibilities.

By considering these factors and continuously striving to meet high standards of credibility, DKPP can maintain or even improve its credibility in resolving cases of violations of the electoral code of ethics after the Constitutional Court's decision.

#### 4. CONCLUSION

The Constitutional Court argues that because DKPP is not recognized by the Supreme Court as a judicial body, its decisions are not final and binding in the same way

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<sup>34</sup> Disantara, Anggono, and Efendi.

as those of other judicial bodies. However, this argument ignores the way in which DKPP is established as an ethical court. Conceptually, the judiciary under the Supreme Court and DKPP as an ethics court are distinct from one another since the former enforces the rule of law and the latter the rule of ethics. Nevertheless, for the electoral process to go smoothly, the DKPP's ruling as a court of ethics must have legal clarity. DKPP rulings are regarded as State Administrative rulings once they have been determined by the Constitutional Court by Constitutional Court Decision Number 31/PUU-XI/2013 for example. In order for it to affect the electability of binding, final DKPP judgments. Any case that the DKPP has determined and concluded may be brought to the State Administrative Court for annulment. In order to ensure that just legal efforts are made when holding elections. The Constitutional Court's Decision Number 31/PUU-XI/2013 is seen as a confirmation of the earlier ruling concerning the DKPP, in which the DKPP's independence as one of the election management organizations is essentially restored..

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