



Authority of the Election Organizer Ethics Council (DKPP) of the Republic of Indonesia in Canceling the General Election Commission (KPU) Decree Number: 161-PKE-DKPP/XI/2020

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ABSTRACT

This study aims to find out how the Authority of the General Election Organizer Honorary Council (DKPP) of the Republic of Indonesia in annulling the General Election Commission Decree. The type of research used by the author is normative law research using normative case studies in the form of legal behavior products. The results of the study show that the Authority of the Election Organizer Honorary Council of the Republic of Indonesia in Canceling the Decree of the General Election Commission of the Republic of Indonesia Number: 161-PKE-DKPP/XI/2020 based on Article 155 paragraph (2) of Law Number 7 of 2017 concerning General Elections is The DKPP is given the authority to examine and decide on complaints and/or reports of alleged violations of the code of ethics committed by election organizers using two methods, namely first by means of juridical authority and second by using theoretical analysis.

Keywords: DKPP; Authority; KPU; Decree

1. Introduction

Elections are one of the characteristics that must exist in a democratic country. Thus, elections are an important tool for the people in the life of the state, namely by selecting their representatives who in turn will control the wheels of government. According to Harris G. Warren, elections are an opportunity for citizens to elect government officials and decide what they want the government to do. And in making that decision, citizens determine what they really want to own (Dewi, 2016; Surbakti, 1992). General elections in Indonesia have long been in effect. The first elections were held in 1955 when Indonesia was only ten years old. Since 1999 elections have been held simultaneously in all regions of Indonesia and once every five years (Ismanu, 2019; Firmanto & Sukirman, 2022).

The process of holding elections in Indonesia is still considered to be of less quality, when compared to other countries (Santoso, 2021; Prawira, 2019). This is due to the emergence of several problems during the preparation stage, the process continues until after the election is over. The manual system used during the first general election by using ballots in the form of paper and ballot boxes as a container for storing checked ballots, costs quite a lot while the results obtained are not optimal (Wahidudin, Octaviola, & Armi, 2014).

In addition to costing a lot of money, people's participation in elections is also not optimal. The number of white groups (Gol Put) has been increasing from time to time. One of the factors that causes a person to become abstentions is when the administrative process is not recorded so that a person cannot exercise his right to vote (Astuti, 2020). The next factor is the Fixed Voter List (DPT), in the voter list there is an opportunity for voters who are not entitled to enter based on election laws and regulations (Safitri, 2019).

Various legal provisions for any election violations as stated in Chapter XV of the Criminal provisions, Article 137 paragraph (2) that "anyone who intentionally causes another person to lose his voting rights objections, is punishable by imprisonment for a minimum of 1 month or a maximum of 6 months and/or a fine of at least two hundred thousand rupiahs or a maximum of two million rupiahs.

The modern democratic system requires elections not only to be held as a mere ritual for leadership succession. More than that, elections are expected to become the actualization and manifestation of people's sovereignty. To uphold the sovereignty of the people, the holding of elections must be based on the principle of free and fair election. However, in recent years the attention of the international community is no longer only focused on realizing free and fair elections, but has started campaigning for the importance of electoral integrity (Goodwin-Gill, 1994)

To realize election organizers who, adhere to moral and ethical values as a manifestation of electoral integrity, in Indonesia a permanent Election Organizer Honorary Council (hereinafter referred to as DKPP) was formed through Law Number 15 of 2011 concerning General Election Organizers (hereinafter referred to as Law No. -Election Organizer Law). The birth of the DKPP is proof that Indonesia has implemented electoral integrity. The Election Organizer Honorary Council (DKPP) is an element of the election organizers along with the KPU and Bawaslu. The main task of the DKPP is to enforce the code of ethics for election administrators (Nasef, 2014).

Furthermore, in Article 3 paragraph (2) of the DKPP Regulation Number 1 of 2013 concerning Guidelines for the Procedure for the General Election Organizer Code of Ethics (hereinafter referred to as the Procedural Regulations for the DKPP Code of Ethics) it is stated that the enforcement of the code of ethics is carried out by the DKPP. DKPP can be said to be very progressive in carrying out its duties and authorities (Feka, Rabawati, Arman, & Taemenas, 2020). It has been proven that in less than two years since the President's inauguration on 12 June 2012, DKPP has received reports of approximately 217 cases of violations of the election organizers' code of ethics. u. A total of approximately 81 cases have been processed and tried by the DKPP. 6 This achievement was not without criticism, various groups considered various DKPP decisions related to cases of violations of the election organizers' code of ethics to be problematic (Asshiddiqie, 2013).

There were at least 3 (three) DKPP decisions that were controversial from a legal standpoint, in these three decisions, DKPP not only found guilty and sanctioned election organizers who were proven to have violated the code of ethics, but DKPP also ordered the KPU to restore the actual rights of complainants. has entered the realm of general election administration. Normatively ideally the Honorary Council of Election Organizers of the Republic of Indonesia (DKPP RI) carrying out its duties and authorities must refer to the applicable laws and regulations, but in fact the DKPP RI has used its authority beyond its authority. This became the basis for researchers to conduct research by raising the title Authority of the Honorary Board of Election Organizers of the Republic of Indonesia in Canceling the General Election Commission Decree.

2. Research Method

This type of research is normative law research using normative case studies in the form of legal behavior products. Data analysis techniques obtained using normative analysis methods, is a way of interpreting and discussing research results based on legal understanding, legal norms, legal theories, and doctrines related to the subject matter. The data collection method in this study was carried out by literature study, which is a way of collecting data by searching and studying library materials.

3. Result and Discussion

3.1. Result

DKPP Duties, Authorities and Obligations are regulated in Article 159 paragraph (1), paragraph (2), and paragraph (3) of Law Number 7 of 2017 which states as follows:

(1) DKPP is in charge of:

- a. receive complaints and/or reports on allegations of Code of Ethics Organizers made by Election Organizers; And
- b. carry out investigations and verifications, as well as examine complaints/or reports of alleged violations of the code of ethics committed by election administrators.

(2) DKPP has the authority to:

- a. summon the Election Organizer who is suspected of violating the code of ethics to provide an explanation and defense.

- b. summon reporters, witnesses, and/or other related parties for questioning, including asking for documents or other evidence.
- c. violating the code of ethics imposing sanctions on proven Election Organizers; And
- d. decide on violations of the code of ethics.

(3) DKPP is obliged to:

- a. apply the principles of maintaining fairness, independence, impartiality, and transparency.
- b. enforce ethical rules or norms that apply to election administrators.
- c. is neutral, passive, and does not take advantage of cases that arise for personal popularity.
- d. submit the decision to the related party to be followed up.

Before the Duties, Authorities, and Obligations of the DKPP were codified in Article 159 of Law Number 7 of 2017 pertaining to General Elections, they were codified in Article 109 of Law Number 15 of 2011 pertaining to General Election Organizers. Due to changing times and the evolution of the Indonesian political system, the law regarding general elections has also been revised so that the position of the article in law number 15 of 2011 regarding the Duties, Authorities, and Obligations of the DKPP has shifted from Article 109 of the old law to Article 109 of law number 7 of 2017.

Comparing law number 7 of 2017 concerning General Elections with law number 15 of 2011 concerning Election Organizers, which has been revoked and declared invalid by the Election law, namely the word "judge" in Article 109 paragraph (2) Law Number 15 of 2011 concerning Election Organizers, reveals this. In the general election law, the concept is no longer addressed. Nonetheless, this does not imply that the DKPP is no longer an ethics court. Because "accept and decide" incorporates the concepts of examining, adjudicating, and deciding. The issue at hand is the effectiveness of using only words. Because the General Election Law does not define justice, it is preferable to outline the concept of justice that can be found in the essence of the nation, and in this instance, in the doctrines taught by Indonesian jurists. To find out how the DKPP's juridical authority is in canceling the KPU decision Number: 161-PKE-DKPP/XI/2020, therefore it can be seen from the chronology of the case as follows:

a) Main Case for Violation of the Code of Ethics and Legal Basis for Cancellation

- Main Case: Defendant I to Defendant V Rejected Registration of Bahraini Couple Kasuba-Muchlis Sangaji Without Minutes of Rejection
- Violation of the Code of Ethics and Legal Basis:

Whereas Defendants I through V did not apply the principles of good governance and breached legal certainty by verbally expressing their rejection. In accordance with the principle of Good Governance as outlined in the Law of State Administration, all actions of State Administrative Officials must be accounted for through a decision, written document, or minutes; if this is not the case, the action in question may be considered a violation of the principles of good governance. The South Halmahera KPU has violated Article 39 paragraph (8) in conjunction with Article 39 paragraph (3) of the PKPU, as well as the principles of good governance, by failing to issue the Minutes in accordance with the matters.

Article 39 Paragraph (8) If a political party or coalition of political parties registers prospective candidates who do not meet the candidacy requirements outlined in Paragraph (3), the Aceh Provincial KPU/KIP or Regency/Municipal KPU/KIP declares in the Minutes that they have not received the registration and returns the candidate registration documents to the relevant Political Party or Coalition of Political Parties. Inasmuch as Article 39 paragraph 5 regulates the obligation to issue official minutes when returning registration documents.

That the actions of Defendant I to Defendant V who refused the Complainant's registration without being accompanied by written documents in the form of Minutes had violated the code of ethics specifically as follows:

- 1) Violating Article 3 letter h related to the professional principle and Article 36 of Law Number 7 of 2017 regarding the oath/pledge to act prioritizing the interests of the nation and state on the basis of legal certainty and statutory regulations, where Defendants I to Defendants V have acted did not issue a written document in the form of minutes of the registration process explaining the reasons for the rejection of the Bahraini pair Kasuba-Muchlis Sangaji.

- 2) Violating Article 11 letter a, letter b, and letter c of the Election Organizer Ethics Council Regulation Number 2 of 2017 violated the principle of legal certainty with Defendant I to Defendant V acting not to issue a Written Decision within their authority and responsibility as a State Administrative Officer who it is accompanied by reasons for the refusal of the Complainant at the time of registration.
- 3) Violating Article 15 letter e, letter g, and letter h of DKPP Regulation Number 2 of 2017 which mandates the existence of professional election administration standards, where Defendants I to Defendants V have been unprofessional by not acting in providing quality service to pairs of candidates who register himself by not issuing the Minutes as the Basis for the Decision on Rejection of Registration.
- 4) Violating Article 16 of DKPP Regulation Number 2 of 20017 which mandates the principle of accountability, where Defendants I to Defendants V have not issued a Minutes as a written Decision explaining the reasons for the rejection of the Bahraini Couple Kasuba-Muchlis Sangaji.

b) Main Cases for Violation of the Code of Ethics and Legal Basis for Cancellation.

- Main Case: Defendants I to Defendant V refused registration due to the absence of Bahrain Kasuba who was ill.
- Violation of the Code of Ethics and Legal Basis for Cancellation:
 - 1) Whereas those who were present at the time of registration were the Deputy Regent Candidate Muchlis Sangaji, because the Complainant was ill.
 - 2) Whereas the Complainant through the Team who was present had given the reason for the Complainant's absence at the time of registration due to being ill as evidenced by a Sickness Certificate from Siloam Hospital Jakarta TB Simatupang (vide Evidence P-2, Certificate from Siloam Hospital Jakarta TB Simatupang). The reason for the absence is in accordance with Article 39 paragraph (7) of the Nomination KPU Regulations which states: If the management of a Political Party or Coalition of Political Parties or one of the prospective candidates or Prospective Pair of Candidates cannot be present at the time of registration as specified in paragraph (5), the Political Party or Coalition of Political Parties or Prospective Pair of Candidates cannot register, unless their absence was caused by an obstacle that can be proven by a statement from the competent authority.
 - 3) Whereas the refusal of Defendant I to Defendant V was not based on the provisions of Article 39 paragraph (7) had violated the provisions of the Legislation, and Defendant I to Defendant V had violated the code of ethics as follows:
 - a) Violating the professional principles of Article 3 letter h and Article 36 of Law Number 7 of 2017 related to an oath or promise to act prioritizing the interests of the nation and state based on legal certainty and statutory regulations where at the time of receiving the Registration of the Bahraini Couple Kasuba-Muchlis Sangaji was not guided in Article 39 paragraph (7) of the Nomination KPU Regulations (a quo).
 - b) Violating Article 11 letter a, letter b, and letter c of DKPP Regulation Number 2 of 2017 violated the principle of legal certainty with Defendant I to Defendant V not guided by Article 39 paragraph (7) KPU Regulation Nomination (a quo) That Bahrain Kasuba was attacked Acute gastric acid due to stress. The stress experienced by Bahrain Kasuba is due to:
 - Lutfi Mahmud, who was a Candidate for Deputy Regent passed away on August 20, 2020 (14 days before the opening of the registration period) namely September 4 2020. (Video Evidence P3, Online News Online News of Lutfi Mahmud's Death) The consequences of the death of the Deputy Regent Candidate are the complainant had to find a new Deputy Candidate, determining the Deputy Candidate was not easy because it was done at the last minute. Then just determined Muchlis Sangaji who is the brother of Lutfi Mahmud to replace.
 - Because the Complainant must replace the Deputy Candidate, the Complainant must re-manage all letters of support for Political Parties at the Central level. This arrangement was not easy because the Secretary General of the Berkarya Party, on behalf of Badarudin Andi Picunang, contracted Covid 19, was being treated in isolation at the Pasar Minggu Regional General Hospital (RSUD) while the complainant was re-ordering the Berkarya Party's support letter. So, it was only on the evening of September 2, 2020, at the

Pasar Minggu Hospital that the Secretary General of Work on behalf of Badarudin Andi Picunang signed the new B1 KWK Document.

- Maneuver from the Chairman of the Regional Leadership Council of the Indonesian Justice and Unity Party (DPW PKPI) of North Maluku Province on behalf of Masrul Ibrahim who revoked the Management issued by the General Chairperson of the PKPI DPN on behalf of Diaz Hendropriyono. So, the revocation of the Complainant's management is invalid, because the Complainant was appointed by the DPN Management but was revoked by the Provincial DPW Management on September 3, 2020. This can be seen in the First Dictum of the Decision of the North Maluku Province DPW PKPI which states: "Revoke and declare the PKP DPN Decision Not Applicable Indonesia Number 002.F/SKEP/DPN PKP IND/MALUT/II/2018, dated 28 January 2020 concerning changes to the personnel composition of the Regency Leadership Council of the Indonesian Justice and Unity Party (DPK PKP Indonesia) South Halmahera for the 2016-2021 period. (vide Exhibit P-4, PKPI DPW Decision revoking the PKPI DPN Decision) If you pay close attention to the South Halmahera PKPI management, it has only been revoked by the PKPI DPN through the PKPI DPN Decree September 5 2020 (see Evidence P-5, PKPI DPN Decision September 5 2020 who appointed Achmad Suriyanto as Chair and Fitra Hamidah Habsari as Secretary), so that the PKPI management who signed the B1 KWK for the Usman Sidiq-Hassan Ali Bassam Kasuba pair on September 3 2020 "Illegal and Legally Disabled" (vide evidence P-6, B1 KWK PKPI Usman-Hasan on September 3 2020 which was signed by Achmad Suriyanto as Chairman and Fitra Hamidah Habsari as Secretary) because he had just been appointed to the PKPI DPN on September 5 2020 through a PKPI DPN Decree. As of September 4, 2020, the complainant is still valid as chairman of the DPK PKPI South Halmahera Regency because there has not been a revocation of the SK DPN PKPI by the general chairman. From this alone, Defendant I to Defendant V who legalized PKPI against the Usman Sidiq-Hasan Ali Basam Kasuba clearly violated the Serious Code of Conduct because B1 KWK was legally flawed.

c) The Third Main Case Violation of the Code of Ethics and Legal Basis for Cancellation.

Whereas the actions of Defendants I through Defendants V who refused the registration of the Complainants without being accompanied by written documents and the actions of Defendants I through Defendants V who refused registration using technical guidelines that were contrary to the KPU Nomination Regulations (a quo) had violated the code of ethics specifically as follows:

- Violating Article 3 letter h and Article 36 of Law No. 7 of 2017 related to an oath or promise to act prioritizing the interests of the nation and state based on legal certainty and statutory regulations, where Defendants I to Defendants V have acted using technical guidelines that narrow the meaning of the Management being "Chairman and Secretary" Contrary to the norms of "Management" Article 39 paragraph (5) of the KPU Nomination Regulations (a quo), as the basis for rejecting the registration of the Bahraini Kasuba-Muchlis Sangaji pair.
- Violated Article 11 letter a, letter b, and letter c of DKPP Regulation Number 2 of 2017 violated the principle of legal certainty with Defendant I to Defendant V acting to create legal uncertainty using technical guidelines which narrowed the meaning of Management to "Chairman and Secretary" Contrary to "Management" Norms Article 39 paragraph (5) Nomination KPU Regulations (a quo) c)
- Violating Article 6, Article 10, Article 11 letters b and c, Article 12 letter b DKPP Regulations Number 2 of 2017 where Defendants I to Defendants V have acted not based on statutory provisions where Defendants I to Defendants V does not carry out the obligations as referred to in Article 39 paragraph (5) of the KPU Nomination Regulations (a quo), where those who are required to be present at the time of registration are the Management (can be chairman, deputy chairman, Secretary, deputy Secretary, Treasurer, Deputy Treasurer), Not mentioning that the Management must be the Chairman and Secretary .

The authority of the DKPP in overturning the decision of the General Election Commission of the Republic of Indonesia, there are two relevant theories that can be used as a measure of the DKPP's authority. Even though these two theories have been used to analyze the position of the DKPP in the resolution of general elections, they are also applicable as an analytical tool for the DKPP's authority in the resolution of general elections. The two hypotheses are:

- a) Authority theory

Authority is the scope of public legal action, the scope of governmental authority, which encompasses not only the authority to make government decisions, but also authority in the context of carrying out tasks; the granting of authority and the primary distribution of authority are governed by statutes. The legal definition of authority is the capacity conferred by laws and regulations to produce legal consequences. While H.D. Stoud's definition of authority is "bevoegheid wet kan worden omscreven als het geheel van bestuurechtelijke bevoegheden door publiekrechtelijke rechtssubjecten in het publiekrechtelijk rechtsverkeer," authority can also be defined as the collection of rules governing the acquisition and use of government authority by public law subjects in public law transactions (Lotulung, 1994).

Power is often equated with authority, and power is often interchanged with the term authority, and vice versa. In fact, authority is often equated with authority. Power usually takes the form of a relationship in the sense that "there is one party who rules, and another party is governed" (the rule and the ruled) (Budiardjo, 1998). According to Max Weber, an authority must be based on legal principles, this is referred to as rational or legal authority, namely authority based on a legal system is understood as a rule that has been recognized and obeyed by society and even strengthened by the State (Setiardja, 1990).

Based on some of the DKPP's policies, the author believes that, in the context of DKPP's authority, it should be given full authority to resolve not only ethical issues, but also administrative issues, because, logically, when an administrative error can be qualified as an ethical error, it can restore the rights of complainants seeking justice at the DKPP institution. Given that the DKPP is a state institution governed by statutes, it is appropriate that this authority is obligatory on all DKPP decisions.

b) Separation of Power

John Locke and Montesquieu, two eminent English and French philosophers, were the originators of the principle of separation of powers. The theory of separation of powers proposed by these two great philosophers is now known as Trias Politica. According to John Locke, there are three types of power:

- 1) Legislative power, tasked with making regulations and laws.
- 2) Executive power, tasked with implementing the existing laws including the power to adjudicate.
- 3) Federative power, its duties include all actions to maintain state security in relations with other countries such as making alliances and so on (today it is called foreign relations).

Meanwhile, Montesquieu, in the matter of separation of powers, also distinguished it in three parts, although there were differences from the concept presented by John Locke, namely:

- 1) Legislative power, tasked with making laws.
- 2) Executive power, tasked with implementing laws (but by Montesquieu priority is action in the field of foreign policy).
- 3) Judicial power, tasked with adjudicating on violations of the law.

There is a distinction in thought between John Locke and Montesquieu based on these two opinions. John Locke incorporated judicial power into executive power, whereas Montesquieu regarded it as an independent power. According to Montesquieu, the three types of authority must be separated in every government, both in terms of the task (function) and the equipment (organs) used to carry it out. According to this doctrine, there is no justification for interfering or exerting influence over one another. Therefore, Montesquieu's teaching is referred to as the separation of powers, which means that each of the three powers must be kept separate, both the institution and the individual responsible for it (Suparto, 2016).

The essence of "Separation of Power" in the modern constitutional system is the tendency to change and emphasize the functions and authorities of the three existing powers, namely the executive, legislative, and judiciary, to maintain the stability and suitability of the state in carrying out its duties in accordance with their respective authorities. Indeed, in the early days of a nation, executive, legislative, and judicial authority resided in the hands of the monarch. This situation created inequality in the process of becoming a state, and as a result, Montesquieu published the theory of the separation of powers outlined in his book "Esprit des lois" as a response and his assumptions about the practice that existed at the time in England.

Abstractly and normatively, according to Montesquieu, there are distinct divisions within the three institutions, namely legislators, law executors, and law or regulation enforcers. Because each authority is governed by the constitution, a semblance of harmony and stability is possible with such a government structure. We can also modify this to reflect Prof. Sri Soemantri's view on the essence of the constitution's contents, including: 1) the protection of human rights and its citizens. 2) stipulate a fundamental constitutional arrangement. 3) Constitutional duties are divided and limited (Thaib, Hamidi, & Huda, 2011).

According to Montesquieu's explanation of state institutions, election administrators such as the KPU, BAWASLU, and DKPP are state institutions because their responsibilities and functions are orders of law. It's the same with the DKPP, even though they only make decisions regarding the code of ethics, which are then erroneously implemented by the KPU and BAWASLU commissioners and ad hoc organizers at lower levels.

The basic policy referred to above, according to researchers in the constitutional context of the Republic of Indonesia, is that DKPP is included in Executive and Judiciary powers, DKPP is a state institution that executes statutory orders, and DKPP is tasked with adjudicating violations of laws. In the same way, the DKPP is governed by laws and DKPP regulations when carrying out its duties and functions, even though within its authority it can only make decisions pertaining to the code of ethics, which can then be misinterpreted by the commissioners of the KPU and BAWASLU and Ad Hoc organizers at the lower level.

3.2. Discussion

The study examines the Authority of the General Election Organizer Honorary Council (DKPP) of Indonesia in annulling the General Election Commission's Decree. It employs normative law research with case studies on legal behavior products. The findings reveal that DKPP's authority to cancel the Decree (No. 161-PKE-DKPP/XI/2020) is based on Article 155 paragraph (2) of Law Number 7 of 2017 on General Elections. DKPP is empowered to investigate and decide on complaints or reports of alleged violations of the code of ethics committed by election organizers, using both juridical authority and theoretical analysis.

4. Conclusion

The results of this research show that the Authority of the Honorary Board of Election Organizers of the Republic of Indonesia in Canceling the Decree of the General Election Commission of the Republic of Indonesia Number: 161-PKE-DKPP/XI/2020 is based on Article 155 paragraph (2) of Law Number 7 of 2017 concerning General Elections is that the DKPP is authorized to examine and decide on complaints and/or reports of alleged violations of the code of ethics committed by election organizers, using two methods, namely using juridical authority and theoretical analysis in order to apply principles, maintain justice, independence, impartiality and transparency and enforce ethical rules or norms that apply to election organizers at every general election momentum and regional head election.

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