



Reconstruction of the Position of the Honorary Council of Election Administrators in the Judicial System in Indonesia

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Abstract

The placement of DKPP as a unitary function of the joint election organizer with the KPU and Bawaslu in article 1 number 7 of Law 7/2017 on General Election has made the position of DKPP unclear, whether DKPP is qualified as a state administrative organ (TUN), or as an independent body outside the organizer elections whose function is related to judicial power. The unclear position implies that the DKPP decision does not have legal certainty because legal remedies can be made at the State Administration Court. As a form of *us constituendum*, the author offers to reconstruct the position of DKPP in the judicial system by removing the DKPP from the election management environment, so that what is meant by election organizers only consists of the KPU and Bawaslu. As well as DKPP in the General Election Law is defined as a body whose function is related to judicial power and has the duty to enforce the code of ethics of election administrators. The author is of the view that with the new formulation arrangements regarding the DKPP, the space for the DKPP is not burdened by the boundaries of the election organizer, and the decisions issued cannot be taken legal remedies to the Administrative Court.

Keywords: *Reconstruction; Position of DKPP; Judicial System in Indonesia*

Introduction

The Election Organizer Honorary Council (DKPP) is an institution in charge of dealing with violations of the code of ethics of election administrators. According to Teguh Prasetyo, this DKPP institution functions to organize an ethical court for election organizers based on the spirit of the nation or is called a *volksgeist*.¹ DKPP compiles and establishes a code of ethics to maintain the independence, integrity and credibility of election administrators. In compiling the code of ethics, DKPP involves the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu) as institutions that will both obey and obey the code of conduct, the code of ethics is further stipulated by DKPP regulations.

¹ Teguh Prasetyo, *Filsafat Pemilu*, Penerbit Nusa Media bekerja sama dengan DKPP RI, Jakarta, 2018, hlm. 143.

The function of DKPP in maintaining the integrity of election administrators is very important because it is impossible to produce a good leader from an election tainted with fraud, because based on reality, there is a tendency that the quality of election implementation is often directly proportional to the quality of the elected officials in the election implementation itself. Improving the ethics of election administrators requires a code of ethics enforcement agencies that are credible and have perfect independence. The independence of DKPP is the main factor in carrying out its function of enforcing the code of ethics, this independence is important in addition to maintaining the spirit of DKPP as the enforcer of the code of ethics, also in order to account for the quality of DKPP decisions (verdicts). A good decision must contain 3 (three) main considerations including philosophical justice considerations, sociological justice considerations, and juridical justice considerations.²

In practice, many people question the openly enforcing model of the election management code of ethics, as well as the design of DKPP decisions which are final and binding. This view is based on two reasons, the first is that ethics are pre-positive philosophical values, so that when they are positive, then it is not ethics, but law. Then the argument regarding the disagreement with the DKPP decision is final and binding because DKPP is still qualified as a state administrative person (TUN), so that as a state administration organ, the products issued cannot be final and binding, but a correction room must be opened at the TUN court.

Meanwhile, on a different side, the enforcement of the code of ethics for election organizers is a necessity in the context of realizing elections with integrity. The author is of the view that improving the integrity of the nation must start from political integrity, improving political integrity must start from the integrity of elections, and improving the integrity of elections, so it must be preceded by improving the integrity of election administrators. Based on this, the reconstruction of DKPP's position in the judicial system is a must.

Formulation of the Problem

How is the reconstruction of DKPP's position in the justice system in Indonesia?

Research Methods

This research is a normative legal research,³ the function of legal research is to obtain the truth of coherence,⁴ namely looking for the conformity between something to be investigated with the rules or principles that are used as a reference.⁵ The approach used in this research is a constitutional approach and a conceptual approach⁶. The legal materials used were primary, secondary, and tertiary which were analyzed using normative/prescriptive analysis.

² Firman Floranta Adonara. *Principles of Freedom of Justice in Decidene The Case as a Constitutional Mandate*. **Jurnal Konstitusi**, Volume 12, Nomor 2, Juni 2015. Page 221

³ Ellyani E, Dimiyati K, Wardiono K, Absori A, Budiono A, Sakroni, The Position Medical Forensics and Visum Et Repertum in Adultery (Overspel) Cases in the Jenang Kutei Traditional Trial in Bengkulu, Indonesia. *Indian Journal of Forensic Medicine & Toxicology*. 2020; 14(1). Page 1463-1467

⁴ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2008, hlm.47.

⁵ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang Banyumedia Publish, 2006, hlm. 57.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media Group, Jakarta, 2016, hlm. 133.

Discussion

The normative mention of the name of the honorary council in elections in Indonesia first appears in Article 22 paragraph (1) of the Law. No. 12 of 2003 concerning the election of members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council, which states, "to examine the violation of the code of ethics committed by KPU members, an add hoc KPU Honorary Council is formed". The mention of honorary council in its development eliminates the word add hoc, and its existence appears in general provisions, to be precise in Article 1 point 20 of the Law. No. 22 of 2007 concerning general election organizers states that the Honorary Council is an apparatus for the KPU, Provincial KPU and Bawaslu which is formed to deal with violations of the election organizer's code of ethics. One of the fundamental changes was that the Honorary Council which was originally referred to as an add hoc was turned into a fittings.

In its development, the position of the Honorary Council has changed to become an institution in charge of dealing with violations of the code of ethics, the mention is written explicitly in Article 1 point 22 of the Law. No. 15 of 2011 concerning Election Administrators, states that "the Honorary Council of Election Administrators is an institution in charge of dealing with violations of the code of ethics of election administrators and is a unitary function of election administration", however in matters of budgeting this institution is still under the Election Supervisory Agency. In the most recent regulation, namely in Law. No. 7 of 2017 concerning the General Election DKPP as an institutionally designed to be organized as an independent organ and outside the scope of the election organizer. However, in terms of position, it can be said that the institutional strengthening of DKPP has not been carried out wholeheartedly,⁷ However, on the other hand, the general provisions that define DKPP are explained as an institution in charge of dealing with violations of the election administration code of ethics⁸.

If we look at these differences, implicitly the legislators want to separate the DKPP from the nomenclature of the election organizers, and the DKPP wants to be positioned as an institution specifically in charge of dealing with violations of the election administration code of ethics. In practice, the unclear position of the DKPP raises problems, whether DKPP as an election management body can also be equated with the TUN Organizations in general, or is this DKPP an enforcement agency for the code of ethics of election organizers which is more of an agency or institution whose function is related to judicial power.

Based on the carefulness of the ratio legis why DKPP is given different authority from code enforcers in general, this is because the current code of conduct enforcement institution is not able to carry out its duties optimally, apart from their closed work methods, also due to the position of code enforcers. Ethics that are still placed as an organ of TUN. In line with this view, Suparman Marzuki⁹ said that the supervisory institutions created to maintain and enforce ethics have not been able to work optimally with various obstacles, starting from a weak legal basis, hanging structural independence and cultural issues.

Based on the need to hold an honest and fair general election and ensure that the integrity of election administrators is also maintained, it is necessary to conduct a study to reconstruct the position of the code of conduct enforcement agency which was originally only as an election organizer which is a unitary function with the KPU and Bawaslu, then changed into a body that adjudicate issues of the code of ethics of election organizers, so that with this nomenclature the handling of code of ethics violations will be carried out using judicial principles.

⁷ Pasal 1 Ayat 7 UU. No. 7 tahun 2017 tentang Pemilihan Umum.

⁸ Pasal 1 Ayat 24 UU. No. 7 Tahun 2017 tentang Pemilihan Umum.

⁹ Suparman Marzuki, Dalam Buku Menggagas Peradilan Etik di Indonesia, Sekretaris Jendral Komisi Yudisial Republik Indonesia, Jakarta, 2015, hlm.113.

The position of DKPP as regulated in Law. No. 7 of 2017, experiencing several problems in carrying out its main duties and functions. The first is the matter of the open trial mechanism implemented by DKPP which is considered out of the agreement, the handling of a profession's code of ethics has been applied in a closed room, and the public only knows the final results of the handling carried out. So that when DKPP was present with an open trial mechanism, not a few thought that this was outside the norm.

The second is the matter of the DKPP verdict which has been taken by a legal attempt at the State Administration Court, in Article 458 paragraph (13) of Law no. 7 of 2017, the DKPP decision is final and binding. However, based on tracing up to February 2020, the number of DKPP decisions made by the legal proceedings at the TUN Court was 52, then the TUN Court decided on the lawsuit filed by the election organizer which was dismissed by DKPP, there were 35, of these the TUN Court decided for the lawsuit to be granted as many as 13, and those who were decided were rejected, there were 19, declared NO 3 and those who were revoked in the process were 1.¹⁰

The author observes that for the first reason regarding the placement of ethics as a pre-positivist philosophical value, it is necessary to note that ethics moves according to the dynamics of the times, ethics is not something static, but ethics is developing and adapting to the needs of the times. Jimly Asshiddiqe¹¹ In the book of ethical justice and constitutional ethics, it is said that ethics in development has evolved into five phases, firstly theological ethics, second developing into ontological ethics, then developing again the third into positivist ethics, four closed functional ethics, and fifth is open functional ethics.

Likewise with the existence of law, the first time the law has not been properly codified as we see today, the law is present as it is now, after going through and having dialogue with the dynamics of the needs of the times. The author is of the view that, what is experienced by ethics today, has also been experienced by law in the past. At its point, the history of the growth of legal positivism is currently plaguing ethics, where ethics is not only conveyed in places of worship or in scientific forums, but must be written down, or in the language of legal ethics it must be codified, equipped with enforcement instruments, and law clear event. Thus placing current ethics in the pre-positive philosophical values phase is inappropriate, because this view is still in the second phase, where ethics is only used as a reference value and only exists in the form of integrity pacts and the like, and if ethics is only placed as a value who are pre-positive, ethics will not be able to answer problems in the field.

Next, regarding the results of the execution of the DKPP decision by legal action at the State Administration Court, the author does not agree with the scheme, at least there are two arguments, the first ethical verdict issued by DKPP, is a decision that is based on ethical values and principles, while the TUN Court decision is a decision that is based on legal values and principles, so that it becomes inaccurate and misleading if the DKPP decision is tested by the PTUN decision. Because in the author's opinion, when there is an election organizer who violates the law, then it can be ascertained that he or she violates ethics, but the election organizer who violates ethics does not necessarily violate the law, because the scope of ethical violations is wider than the scope of law violations. Thus allowing the State Administration Court to correct the DKPP decision is something that is not right.

The second reason why the authors do not agree that the DKPP decision is corrected or tested by the TUN Court decision, is because the character of the election problem has a different genus from the character of the problem in general. The differences, among others, stem from demands to resolve problems in a fast time, because when there is an election problem that is being questioned, the election

¹⁰ Rekapitulasi jumlah putusan DKPP yang dilakukan upaya hukum ke pengadilan TUN, Peneliti mendapat data dari kepala bagian persidangan DKPP RI, tertanggal 30 maret 2020

¹¹ Jimly Asshiddiqe, *Peradilan Etik dan Etika Konstitusi*, Sinar Grafika, Jakarta, 2016, hlm 84.

stages will continue (no delay in stages can be carried out), so a speedy trial is needed, that is the reason why the settlement of election result disputes (PHPU) in the Constitutional Court is given a time limitation, however for judicial review (PUU) there is no time limit. for example for PHPU the election of President and Vice President is limited to 14 days, Furthermore, for legislative election PHPU is given a limit of 30 days and PHPU regional head and deputy regional head elections are given a limit of 45 days. All the arrangements regarding these limitations are in the context of providing certainty, because if no strict limitations are given, it is feared that the case will be able to be resolved by the judiciary, but the decision cannot be implemented because the election stage has ended.

The author observes that several points of the lawsuit that have been submitted to the State Administration Court are based on the arguments on the Constitutional Court decision number 31 / PUU-XI / 2013, which one of the points of affirmation is placing DKPP's position as a state administrative organ, thus DKPP is not included in the framework of judicial power as referred to in Article 24 of the 1945 Constitution of the Republic of Indonesia¹², so that the products issued are considered final and binding only for the President, KPU and Bawaslu who will carry out the execution, but not final for justice seekers, so there is room for legal remedies to be made.

The author observes that in Law no. 7 of 2017, the problem regarding the final phrase originating from the 2013 Constitutional Court decision did not receive a response, so that the phrase in the Article was not revised, which is in article 458 paragraph (13) of Law No. 7 of 2017, it is stated that the DKPP decision is final and binding, in the explanation section of article 458 paragraph (13) of Law No. 7 of 2017 is stated quite clearly, based on this regulation it can be interpreted that the legislators design that DKPP's ethical decisions cannot be subject to legal remedies. Because the final phrase according to Mohammad Saihu, defined as a decision that has no other legal remedy after being pronounced in an open DKPP plenary session, while the phrase binding means that the decision has compelling power so that all state administering institutions including the judiciary are bound and obliged to implement the DKPP decision.¹³

The view that still places DKPP as an organ of state administration and is not included in the framework of judicial power, one of which is due to the conventional paradigm in which judicial power in Indonesia in general consists of the Supreme Court and the Constitutional Court, this view has long been accepted after the amendment of the 1945 Constitution was implemented. One of the articles that underlie it is Article 24 paragraph (2) of the 1945 Constitution, which states "judicial power is exercised by a Supreme Court and the judiciary under it in the general court, religious courts and military courts, state administration courts, and by an MK".

Starting from Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, a paradigm is formed that there are only two judicial powers in Indonesia. However, there is a broader definition given by Sudikno Mertokusomo, which defines justice as follows:

"The word judicial consists of the basic word "fair" and gets the prefix "per" and the suffix "an" means everything that is related to the court. Court here is not defined solely as a body to judge, but as an abstract meaning, namely "the matter of giving justice" ... which is related to the body's duty to give justice".¹⁴

¹² Putusan Mahkamah Konstitusi Nomor 31/PUU-XI/2013, hlm. 70.

¹³ Mohammad Saihu dkk, *Penyelenggara Pemilu di Dunia*, Dewan Kehormatan Penyelenggara Pemilu, CV Net Communication, Jakarta, 2015, hlm. 178.

¹⁴ Sudikno Mertokusomo, *Sejarah Peradilan dan Perundang-Undangannya di Indonesia Sejak 1942 dan Apakah Kemanfaatannya Bagi Kita Bangsa Indonesia*, Cetakan Kedua, Liberty, Yogyakarta, 1983, hlm., 2-3.

The definition conveyed by Sudikno Mertokusumo becomes relevant if it is put in the formulation of Article 24 Paragraph (1) of the 1945 Constitution: "Judicial power is an independent power to administer justice in order to uphold law and justice". As well as in article 24 paragraph (3) of the 1945 Constitution: "other bodies whose functions are related to judicial power are further regulated in law".

Connecting the meaning of the word judiciary from Sudikno Mertokusumo with the regulation of Article 24 paragraph (1) and paragraph (3) of the 1945 Constitution, it can mean that everything related to court is not properly interpreted as a body for judging only, but it must be meaningful. which is broader or abstract, namely "things to provide justice", which can also be interpreted in relation to the duties of an agency in providing justice.

Based on the construction of Articles regulating judicial power in the 1945 Constitution, it can be interpreted that Article 24 paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution does not have a monopoly on judicial power, in the sense that judicial power does not only belong to The Supreme Court and the Constitutional Court, however, there are other bodies whose functions related to judicial power are also recognized in Chapter IX of the 1945 Constitution concerning judicial power. When the existence of the agency is still under the auspices of Article 24 of the 1945 Constitution and the authority that is further regulated in the law is still related to judicial power, then the existence of this body or institution is included in the judicial system in a broad sense. Because the agency participates in conducting the judiciary in order to uphold law and justice as referred to in Article 24 paragraph (1) of the 1945 Constitution.

The author observes that the existence of Article 24 paragraph (3) of the 1945 Constitution is part of the long-term (futuristic) thinking of the 1945 constitution formers at that time, where the founders already thought that it is very possible that in the future along with the dynamics of the state administration, a new institution is needed which where the institution is under the authority of the judiciary, on the basis of that thought a forum is provided with article 24 paragraph (3) of the 1945 Constitution. Thus Article 24 paragraph (3) of the 1945 Constitution is very visionary and futuristic, based on these considerations, DKPP as Ethical judiciary bodies for election administrators, are a form of development of a judicial body that is not included in the category under the Supreme Court, nor under the Constitutional Court. However, DKPP is covered by Article 24 paragraph (3) of the 1945 Constitution.

The presence of DKPP in the electoral system is a new channel, in resolving issues of code of ethics which so far have only been used as decoration. So that the existence of DKPP It is constructed as an ethical judiciary body for election organizers, and if we pay close attention to the authority of the DKPP regulated in Law No.7/2017, it starts from receiving reports of violations of the code of ethics, conducting investigations and verification, and examining reports of violations of the code of ethics committed by election organizers. Included in the arrangement of DKPP's obligations in carrying out their duties, starting from implementing the principles of maintaining justice and independence. And at the end of the trial DKPP issued a product in the form of a verdict (verdict), all of these arrangements were included in the category of judicial duties that provide justice.

Based on the description of the problem and solution as described above, in order to make this opinion concrete, the reconstruction of DKPP's position in the judicial system was carried out by revising Article 1 point 7 and Article 1 point 24 of the Law. No. 7 of 2017. In Article 1 point 7, the definition of election administrators consists of three institutions, namely the KPU, Bawaslu and DKPP as a single function of organizing elections, the author is of the view that there are only two so-called election organizers, namely KPU and Bawaslu. So that DKPP is not properly classified as an election organizer because DKPP has the task of upholding the election organizer's code of ethics itself.

Furthermore, in Article 1 number 24 of Law 7/2017, which regulates general provisions concerning DKPP, it is changed to DKPP, which is a body whose function is related to judicial power and has the duty to deal with violations of the election organizer's code of ethics. The author is of the view that with the new formulation arrangements regarding the DKPP, the space for DKPP is not burdened by the limitations of the election organizers, and the product issued in this case is a verdict (verdict), legal remedies cannot be made to the TUN Court.

Conclusion

The issue of DKPP's unclear position as a state administrative organ, or DKPP as an agency whose function is related to judicial power, has caused its function as code enforcer to not run optimally, the function of the DKPP has been disturbed because first the code of ethics trial mechanism is conducted openly Many questioned, and the nature of the final and binding decision was seen as out of agreement, this view was due to the placement of DKPP as an organ of the State Administration, so that when issuing legal products a correction room must be opened at the State Administration Court.

The reconstruction of DKPP's position in the judicial system in Indonesia was carried out by revising Article 1 number 7 and number 24 of the Law. No. 7/2017. Revision of Article 1 point 7 is needed by limiting the definition of election administrators to only KPU and Bawaslu, and revision of Article 1 point 24 confirms that the DKPP is a body whose function is related to judicial power and has a duty to deal with violations of the code of ethics of election administrators.

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