



Degradation of Authority and Institution of The Honorary Council Election

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ABSTRACT

This article discusses the position of the DKPP after the Constitutional Court Decision Number 32/PUU-XIX/2021 and the power of its decision. As is known, after the Constitutional Court Decision Number 32/PUU-XIX/2021, the DKPP Decision, which was originally final and binding, became unconstitutional if it was not interpreted as only binding on the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu. The research method used is a legal research method using statutory approach, historical approach, and conceptual approach to be able to find new formulation of DKPP structuring design after Constitutional Court Decision Number 32/PUU-XIX/2021. The results of this study found that the weakening of the authority of the DKPP through the decision of the Constitutional Court Number 32 / PUU-XIX / 2021, should also be followed by the weakening of the DKPP institution, because after the final and binding character is weakened by the Constitutional Court, the DKPP no longer has the urgency to be used as a permanent institution. The Constitutional Court should affirm the institutional status of the DKPP as part of the institution exercising judicial power, so that the DKPP has a more definite status and its decisions remain final and binding.

Keywords: Constitutional Court Decision; Election; Election Law; DKPP

Citation: Jamil, Jamil, and Sholahuddin Al-Fatih. 2022. "Degradation of Authority and Institution of The Honorary Council Election". *Mulawarman Law Review* 7 (2):119-27. <https://doi.org/10.30872/mulrev.v7i2.912>.

INTRODUCTION

The country of Indonesian, has a unique and dynamic state organizing pattern ¹. This uniqueness is increasingly visible, when the choice of legal state taken by Indonesia, is not only based on the legal system that is commonly used, both the *rechtstaat* model and *the rule of law*. Indonesia prefers Pancasila, with a philosophy of nation and state based on the values of local wisdom that develops from the community². Thus, in the practice of administering government, in Indonesia we usually find some state institutions that we may not find in other countries. For example, in the context of

¹ Aditya, Zaka Firma and Al-Fatih, Sholahuddin, 2017. "Democracy And Human Rights as A Solution to Resolve the Humanitarian Crisis in Muslim Countries (Study of The Values of Democracy and Human Rights in The Qur'an and Hadith)". Proceeding 1st International Conference on Islamic Studies (ICIS 2017) "Reviving Islamic Values in Response to Human Crisis", 22nd February 2017, Yogyakarta, Indonesia, Available at SSRN: <https://ssrn.com/abstract=3527977>

² . *ibid*.

holding elections, in Indonesia there are supervisory institutions such as Bawaslu, Gakkumdu³ and the Honorary Council of Election Organizers or DKPP.

These two institutions, we cannot find in other countries than Indonesia. The dynamism of holding elections, the stronger and more unique because almost every election period (and perhaps even throughout the year), there is a judicial review to the Constitutional Court⁴. Most recently, the Constitutional Court (MK) again gave a conditional constitutional interpretation of the provisions contained in Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections through Constitutional Court Decision Number 32/PUU-XIX/2021. The provision repeats the provisions in Article 112 paragraph 12 of Law Number 15 of 2011 concerning the Organizers of General Elections and the Article has been interpreted constitutionally conditional (*conditionally constitutional*) by the Constitutional Court through P envoi No. 31/PUU-XI/2013. This means that the Constitutional Court still adheres to its opinion, that the decision of the Honorary Council of Election Organizers (DKPP) is final and binding, is unconstitutional if it is not interpreted as only binding on the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu.

This problem cannot be separated from the previous Constitutional Court decision, namely the Constitutional Court Decision Number 11 / PUU-VIII / 2010 which states that both Bawaslu and the DKPP are a unit of election organizers who have equality of degrees, are permanent and independent, such as the KPU (Nazir, 2017). Therefore, the law must guarantee the independence of the three institutions organizing the elections. Based on the Constitutional Court's decision, the formation of election organizers consists of the KPU as the technical organizer of ownership, Bawaslu as the supervisor and enforcement of election law and the DKPP as an institution authorized to maintain the ethics of election organizers⁵.

As a follow-up to the Constitutional Court's decision, Law Number 22 of 2007 concerning General Election Organizers was repealed and replaced with Law Number 15 of 2011 concerning General Election Organizers. In Law Number 15 of 2011, it is explained that the recruitment of Bawaslu members is no longer the authority of the KPU, but is within the authority of the same selection team as the selection team that also selects KPU members. Likewise, the DKPP which by Law Number 22 of 2007 is referred to as an *ad hoc* institution, but in Law Number 15 of 2011 affirmed its position as an institution that remains domiciled in the national capital. In its development, in 2017 there was a merger of three ownership laws consisting of Law Number 15 of 2011 concerning General Election Organizers, Law Number 42 of 2008 concerning the General Election of the President and Vice President, and Law Number 8 of 2012 concerning the General Election of Members of the DPR,

³ Esfandiari, F., & Fatih, Solahuddin. Al 2020 . "Initiating a Permanent Electoral Body to Resolve Dignified Election Disputes: Assessing the Effectiveness of Gakkumdu". *Yustisia Jurnal Hukum*, 9(3), 333. <https://doi.org/10.20961/yustisia.v9i3.44437>

⁴ Al-fatih, Sholahudin,. 2020. "Electoral Regulation in Indonesia: Is It Modern Law?" *Unnes Law Journal*, 6(2), 205–216. <https://doi.org/https://doi.org/10.15294/ulj.v6i2.41627>

⁵ Wiesje Fenni Wilar. 2019. Stakeholder Pemilu Dalam Menyukseskan Pelaksanaan Pemilu Serentak 17 April Tahun 2019. *Jurnal Holistik*, 12(0), 1–13. <https://ejournal.unsrat.ac.id/index.php/holistik/article/view/23448/23129>

DPD, and DPRD through one codification of regulations, namely the Law Number 7 of 2017 concerning General Elections⁶. In Law Number 7 of 2017, Bawaslu's position and authority are again strengthened by making Bawaslu a permanent institution, and enforcing the law through the judicial process to deal with violations of election administration and disputes over the electoral process. As stated for the DKPP, Law Number 7 of 2017 reaffirms the position of the DKPP as a permanent institution and its decision is final and binding.

The final and binding character of the DKPP decision has been overturned by the Constitutional Court through Decision Number 31/PUU-XI/2013. In its decision, the Constitutional Court ruled constitutionally conditional. This means that the meaning of final and final is contrary to the 1945 NRI Constitution if it is not interpreted as final and binding for the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu. In Law Number 7 of 2017, the final and binding phrase is reaffirmed in Article 458 paragraph (13) of Law Number 7 of 2017. The article was again tested to the Constitutional Court and the Constitutional Court remained in the opinion as in decision No.31/PUU-XI/2013, namely that the DKPP decision is final and binding only on the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu.

There are several reasons for the Constitutional Court's decision, including (1) the final and binding decision of the DKPP causes the DKPP to be *very superior* to other election organizers. Although, the design of the inaction of the three institutions administering the elections is equivalent; (2) The DKPP is an internal apparatus of election organizers and not a judicial institution so that its decisions are not the same as the judiciary in general; and (3) DKPP decisions are a form of State Administrative Decree (KTUN) and can be the object of a lawsuit in the State Administrative Court (PTUN). Based on the background mentioned above, the author feels the need to conduct a comprehensive study regarding the position of the DKPP and the character of the resulting verdict. Moreover, the position of the KPU, Bawaslu (which also received the mandate to form Gakkumdu) and the DKPP as the organ of organizing elections, often overlapping authority and tug-of-war interests. So, in the discussion of this article, it will be very possible that in addition to discussing the DKPP, there will be slices of discussion topics with other election organizing organs, such as the KPU, Bawaslu and Gakkumdu.

Based on the background above, there are several problems discussed in this paper, as follows: a) What are the legal implications of the Constitutional Court Decision Number 32/PUU-XIX/2021 on the position of the DKPP?; b) What is the design of the proper DKPP arrangement after the Constitutional Court Decision Number 32/PUU-XIX/2021?

METHOD

This paper uses legal research methods⁷, which is a process to find the right legal rules, legal principles, legal theories or concepts to solve the legal problems faced⁸. In this

⁶ Al-fatih. 2020. *op.cit.*

⁷ Irwansyah. 2020. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (A. Yunus (ed.). Mirra Buana Media.

⁸ Jonaedi Efendi. & Johnny Ibrahim., 2016. *Metode Penelitian Hukum: Normatif dan Empiris* (Pertama). Prenadamedia Group.

study, a statutory approach (*statute approach*), historical approach, and conceptual approach⁹ were used to be able to find new formulations of DKPP structuring design after the MK Envoy Number 32 / PUU-XIX / 2021.

DISCUSSION

Legal Implication of the Constitutional Court Decision Number 32/PUU-XIX/2021 on the Position of DKPP

The Honorary Council of Election Organizers (DKPP) was born as one of the solutions to the problem of weak integrity and neutrality of election organizers which often tarnish the implementation of elections. Through Law Number 22 of 2007 concerning Election Organizers, DKPP was born under the name of the Honorary Council (DK). The DK is formed only when there are complaints of ethical violations allegedly committed by election organizers (*ad hoc*). However, the DKPP continues to be formed every election periodization because the level of violation of the code of conduct for election organizers is increasing¹⁰. The basis for its formation was in the form of a decree issued by the KPU or Bawaslu. Its authority is also still very weak because it is only authorized to receive complaints, call, check and issue recommendations. In addition to having weak authority, the composition of the DK leadership is dominated¹¹.

In it, both institutional strengthening and strengthening authority. In Law No. 15 of 2011, the DKPP institution is permanent (permanent). The composition of the leadership is also no longer dominated by the KPU but is dominated by the community figure proposed by the DPR and the Government. Meanwhile, the authority of the DKPP no longer provides recommendations but issues decisions after conducting an examination through a trial mechanism for alleged ethical violations committed by election organizers (KPU/Bawaslu). The DKPP is domiciled in the national capital but has the authority not only to examine (prosecute) central-level election organizers, but also to have the authority to examine alleged violations committed by regional election organizers¹². The decision of the DKPP is final and binding.

For the strengthening of the authority of the DKPP, former chairman and member of the DKI Panwas Jakarta Ramdanyah submitted a *review* of several articles of strengthening the DKPP which are contained in Law No. 15 of 2011, after the person concerned was sentenced to dismissal from membership of the DKI Jakarta Panwas¹³. Among the articles tested by the material (*judicial review*) is Article 112 paragraphs (12) and (13) which basically regulates the character of the final and binding DKPP decision. Through the Constitutional Court Envoys No. 31/PUU-XI/2013, the Constitutional Court provides a

⁹ Solahuddin Al-Fatih and Ahmad Siboy, 2021. *Menulis Artikel Karya Ilmiah Hukum di Jurnal Nasional dan Internasional Bereputasi*. Inteligencia Media.

¹⁰ Jimly Asshiddiqie, 2013. *Menegakkan Etika Penyelenggara Pemilu*. Raja Grafindo Persada.

¹¹ Lusy Liany, 2016. Desain Hubungan Kelembagaan Penyelenggara Pemilu. *Jurnal Cita Hukum*, 4(1), 51–72. <https://doi.org/10.15408/jch.v4i1.3198>

¹² Jimly Asshiddiqie, 2013. *Op.cit*

¹³ DetikNews. 2013. *Dipecat DKPP, Mantan Ketua Panwaslu DKI Ajukan Gugatan ke MK*. Detik News. <https://news.detik.com/berita/d-2185429/dipecat-dkpp-mantan-ketua-panwaslu-dki-ajukan-gugatan-ke-mk>

conditionally constitutional interpretation, which means that the DKPP decision are final and binding if they are interpreted as final and binding to the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu. Meanwhile, Presidential Decrees, KPU, Provincial KPU, Regency/City KPU and Bawaslu are State Administrative Decrees that can be the object of a lawsuit in the State Administrative Court¹⁴.

In Law Number 7 of 2017 concerning General Elections, it is stated that the character of the final and binding DKPP decision is re-emerged, which is regulated in article 458 paragraph (13) which states "the decision as referred to in paragraph (10) is final and binding". These provisions were again submitted to the Constitutional Court for judicial review and through the decision of the Constitutional Court Number 32/PUU-XIX/2021, the Constitutional Court reaffirmed the previous decision, namely decision Number 31/PUU-XI/2013. That is, the Constitutional Court again gave a *conditionally constitutional* interpretation of the final and binding character regulated in article 458 paragraph (13) of Law No.7 of 2017.

From the process of strengthening the institutions and authority of the DKPP as explained above, it is clear that the strengthening of the institutions and authority of the DKPP is carried out through a long process and evaluation of the precedents of the enactment of previous laws¹⁵ therefore the Constitutional Court should see that between institutional strengthening and strengthening authority in the DKPP body is a whole package that cannot be separated. If the authority is weakened, then institutional strengthening will be futile if the decision is redundant.

The weakening of the authority of the DKPP, through the two Constitutional Court decisions above, has implications for the return of the existence of the DKPP decision when its authority is still attributable through Law Number 22 of 2017 and named DK KPU / DK Bawaslu. The DK KPU is only able to provide ethical sanctions to election organizers in the regions even up to the sanction of dismissal¹⁶, but not for central organizers, even though the precedent for gross violations of the code of ethics has been proven to have been committed by one of the central KPU members, namely Wahyu Setiawan.

After the decision of the Constitutional Court Number 32/PUU-XIX/2021, the existence of the DKPP decision will only be effective for regional election organizers, why is that? because if the decree (SK) of dismissal issued by the central election organizer as a follow-up to the decision of the DKPP, then the decree issued to the State Administrative Court, and the court cancels it, then the cancellation by the state administrative court has the potential to be challenged by the election organizer and the sanctions imposed by the

¹⁴ Pramana, I., Gede Aris Eka, I., Made Arjaya, & Ida Ayu Putu Widiati. 2020. Kompetensi Absolut Peradilan Tata Usaha Negara Terkait Titik Singgung Antara Peradilan Tata Usaha Negara dan Peradilan Umum dalam Sengketa Pertanahan. *Jurnal Analogi Hukum*, 2(1). <https://doi.org/10.22225/.2.1.1604.27-31>

¹⁵ See, Law No. 22 of 2017 and Law No. 15 of 2011

¹⁶ M. Luthfi Chakim, 2014. Desain Institusional Dewan Kehormatan Penyelenggara Pemilu (DKPP) Sebagai Peradilan Etik. *Jurnal Konstitusi*, 11(2), 393–408. <https://doi.org/doi.org/10.31078/jk%25x>

DKPP on the regional election organizer will still exist because the Decision of the State Administrative Court that overturns the DKPP decision does not Executed.

Meanwhile, if the DKPP decision is handed down to the central election organizer, then followed up by the President and the decree issued by the President is sued to the State Administrative Court and the lawsuit is accepted, then the president will execute the decision of the state administrative court, namely revoking the decree dismissing the election organizer and returning the election organizer to his position as the election organizer.

This is exactly the existence of the DK KPU decision even though it has different causes. It is difficult for the KPU DK to sanction dismissal because the DK KPU body is dominated by the KPU, while the DKPP, is more due to its decision being overturned by the State Administrative Court. Because between institutional strengthening and strengthening authority cannot be separated, if the authority is weakened, the institutional authority is also weakened. The concrete form of weakening the DKPP is to change the character of the DKPP decision, which was originally permanent or permanent, to be sufficiently *ad hoc*. That is, by claiming the status as an *ad hoc* institution, if in the future, no more violations of the ethics of holding elections are found, then the DKPP can disbanded.

The Design of DKPP's Arrangement After Constitutional Court Decision Number 32/PUU-XIX/2021

The basis for the consideration of the Constitutional Court Judge in providing a final and binding interpretation of the phrase for the DKPP decision other than what the author has explained in paragraph before him, is that the DKPP is not a judicial institution that exercises judicial power, so its decision cannot be equated with the judicial institution in general, the DKPP is an election organizing institution that has an equal position with other election organizing institutions (KPU/Bawaslu).

DKPP is an institution that has the authority to prosecute ethical violations committed by election organizers through a court mechanism (*judicial*). Because of the same authority and mechanism as this court, the DKPP is often referred to as a quasi-court or semi-court institution¹⁷ If we look at the functions and authorities of the DKPP which only adjudicates the code of ethics for election organizers, it is difficult to categorize the DKPP into executive institutions like other quasi-judicial institutions such as KKPPU and Bawaslu which have an active function in conducting supervision. The DKPP is an institution that passively only performs its functions when there are complaints about alleged violations of the code of conduct complained by election organizers.

The Constitutional Court's consideration in its decision also does not expressly state that the DKPP is an executive institution. The Constitutional Court only stated that the DKPP is an election organizing institution equivalent to the KPU and Bawaslu and is not a judicial institution that runs the judiciary as mandated by article 24 of the 1945 Constitution.

¹⁷Jimly Asshiddiqie, (n.d.). *Pengadilan Khusus*. Jimly.Com. Retrieved April 25, 2022, from http://www.jimly.com/makalah/namafile/161/PENGADILAN_KHUSUS_02.pdf

According to Jimly Ashiddiqie, the DKPP entered a new judicial system tasked with adjudicating violations of the code of conduct. The ethical judicial function of the DKPP is different from that of the Judicial Commission. Although it is in the realm of the judicial branch of power, the DKPP is an executive enforcement agency of the judge's code of conduct. The DKPP is also different from the Honorary Body of the DPR and the Honorary Assembly of the Constitutional Court whose way of working does not reflect the idea of justice. Meanwhile, the DKPP performs judicial functions¹⁸.

Jimly Asshiddiqie also blamed the construction of Article 24 paragraph (2) of the NRI Constitution which only adopted the provisions in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power during the fourth amendment to the 1945 Constitution in 2002¹⁹. Article 24 of the 1945 NRI Constitution formulates the exercise of judicial power consisting of the Supreme Court and the judicial bodies subordinate to it in the general judicial environment, the religious judicial environment, the military judicial environment, and the state administrative court environment, and by a Constitutional Court²⁰. Based on the formulation of article 24 of the NRI Constitution, the constitutional structure of the judicial institution consists only of the Supreme Court along with the four structural judicial institutions below it (general courts, religious courts, state administrative courts, and military courts) and the Constitutional Courts. This constitutional structure is too narrow to accommodate the needs of other judicial institutions both special and semi-judicial institutions (*quasi-judicial*)²¹.

Departing from the analysis above, the DKPP is a judicial institution, which has difficulty finding recognition (legitimacy) of the constitution due to the incorrect construction of the constitution which only limits the structure of the judicial institution to two judicial channels, namely the Supreme Court and the Constitutional Court²². The Constitutional Court should be the interpreter of the constitution to provide a more progressive interpretation in seating the DKPP into the judiciary, not the other way around, saying the DKPP is not a judicial institution and the decisions of the authorized institutions that follow up on its decisions can be the object of a lawsuit in the state administrative court.

The improper logic of the Constitutional Court is because Article 2 of Law No.9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning the State Administrative Court provides an exclusion of the object of state administrative disputes against several state administrative decisions, one of which is the State Administrative Decree issued based on the results of the examination of the judicial body based on the provisions of laws and regulations that applies. According to Anajeng Esri Edhi Mahanani, the juridical logic of the exception to the State Administrative Decree issued on the basis of the results of the examination of the judicial body from the object of the suit of the state administrative court, is that since the decision is based on the judgment of the judicial institution, the decision is not a decision of the state administrative officer based on the consideration

¹⁸ *ibid.*

¹⁹ Jimly Asshiddiqie, 2011. *Konstitusi dan Konstitusionalisme Indonesia*. Sinar Grafika.

²⁰ Jimly Asshiddiqie, 2011. *Perihal Undang-Undang* (1st ed.). Raja Grafindo Persada.

²¹ *ibid.*

²² Solahuddin Al-Fatih, S. 2018. Model Pengujian Peraturan Perundang-Undangan Satu Atap Melalui Mahkamah Konstitusi. *Jurnal Ilmiah Hukum LEGALITY*, 25(2), 247.

of the administration of the state- an in order to carry out his main duties as a state organizer based on the attribution of authority he has²³.

Thus, the DKPP's decision was not issued based on the administrative work process carried out by government administrative officials, but was issued based on the examination process through a trial mechanism held openly to the public by an institution that was only authorized to adjudicate ethical violations allegedly committed by election organizers. Based on the *judicial* process, it is very unwarranted if the DKPP decision is equated with a decree (*beschikking*) issued by a government administrative institution which is carried out unilaterally without a trial process in front of the legal subject to the decree.

CONCLUSION

The weakening of the authority of the DKPP through the decision of the Constitutional Court Number 32/PUU-XIX/2021, should also be followed by the weakening of the DKPP institution, because after the final and binding character is weakened by the MK, the DKPP no longer has the urgency to be used as a permanent institution. The Constitutional Court should affirm the institutional status of the DKPP as an *ad hoc* judicial institution. Even though it is, for now Indonesia still needs the DKPP as one of the elections organizing institutions that collaborates with the KPU, Bawaslu and Gakkumdu to realize the elections which is direct, public, free, secret, honest and fair (*luber jurdil*).

ACKNOWLEDGEMENTS

Our grateful and thankful to our institution, namely Universitas Bhayangkara (Ubhara) Surabaya, Bawaslu Sidoarjo and Universitas Muhammadiyah Malang (UMM). We acknowledge to the Mrs. Orin, who helped as in finishing this article by providing valuable suggestion and discussion. May Allah always bless us

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²³ . Anajeng Esri Edhi Mahanani, 2021. Pemetaan Normatif Logika Pengecualian Keputusan Tata Usaha Negara dalam Penyelesaian Sengketa Tata Usaha Negara. *Widya Pranata Hukum : Jurnal Kajian Dan Penelitian Hukum*, 3(1), 76–89. <https://doi.org/10.37631/widyapranata.v3i1.267>

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