

Reconstructing the Principle of Legal Certainty as an Object of the Honorary Board of Election Organizers

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Abstract: This article aims to know and analyze efforts to reconstruct the principle of legal certainty which is the object of the case in the Ethics Court of the Ethics Council of the Election Organizer in Indonesia. This research uses normative legal research methods or doctrinal legal research. This article shows that there is legal uncertainty in the regulation of the Ethics Council of Election Organizers. Therefore, this article provides recommendations for specific arrangements regarding legal certainty that become material elements of the case that can be submitted to the Honorary Council of Election Organizers.

Keywords: Honorary Board of Election Organizers; Legal Certainty; Reconstruction

1. Introduction

The implementation of general elections is a manifestation of electoral integrity in Indonesia, in establishing an institution called the Honorary Board of Election Organizers (DKPP) which is permanent through Law Number 15 of 2011 concerning General Election Organizers. DKPP is intended to be able to maintain and uphold the independence, integrity, and credibility of the Election Organizer. More specifically, Article 155 paragraph (2) of Law Number 7 of 2017 concerning General Elections states: "DKPP is established to examine and decide complaints and/or reports of alleged violations of the code of ethics committed by members of the KPU, members of the Provincial KPU, members of the Regency / City KPU, members of Bawaslu, members of the Provincial Bawaslu and members of the Regency / City Bawaslu.(Warjiyati, 2020)(Surawijaya dkk., 2022)(Cenedy, 2017)

DKPP's position as an independent supporting state institution. The relationship between DKPP and KPU RI and Bawaslu RI structurally is equal, interrelated and each is independent (checks and balances) in organizing elections. DKPP is an institution that keeps the election organizers performing their duties and authorities in accordance with the code of ethics if the election organizers violate the code of ethics. (Fendra dkk., 2022)

Basically, it relates to a series of general provisions related to the Election Organizer Code of Ethics which contains the implementation of basic principles of ethics and behavior, sanctions, closing provisions. From this, it contains the most important rights, namely: 1). Basic Principles of Ethics and Behavior; 2). Implementation of Basic Principles of Ethics and Behavior; and 3). Provisions on Sanctions. The Code of Ethics for Election Organizers aims to maintain the independence, integrity, and credibility of members of election organizers at all levels. (Kurnia, 2020)

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Ethics is the attitude and behavior of humans in everyday life related to individual morals and ethics not only relates to real actions but also includes the motives of an action taken by a person. State organizers in carrying out their functions (duties and authorities) are always bound by legal norms, ethics and local customs (local wisdom). (Kurnia, 2020)

The ethics of state administrators are essentially directly related to the implementation of the functions of state administrators and state administrators must act as ethical standards, displaying moral values such as good faith and other principles needed to live in society and the state. The code of ethics for election organizers was initially outlined in the form of a Joint Regulation of the KPU, Bawaslu and DKPP. Why is that? The code of ethics is compiled based on the internal awareness of the election organizers who bind themselves voluntarily (voluntary norms imposed within the consciousness of the subjects). (Kurnia, 2020)

The Election Organizer's Code of Ethics is an Ethical Standard that must meet three legal objectives, namely Justice, Benefit and Legal Certainty, and become binding provisions and must be obeyed by election organizers at all levels and ranks as a limitation in carrying out their duties and authorities and to be able to protect the rights of election participants, candidate pairs and voters, therefore violations of the Code of Ethics will be subject to sanctions in accordance with applicable regulations. (FeriYanti, 2019)

In the Election Organizer Honorary Council Regulation Number 2 of 2017 concerning the Code of Ethics and Code of Conduct for General Election Organizers in Chapter I general provisions Article 1 paragraph (4) reads "The Election Organizer Code of Conduct is a unity of moral, ethical, and philosophical principles that guide the behavior of election organizers in the form of obligations or prohibitions, actions and / or speech that should or should not be done by Election Organizers".

If seen based on the provisions in the article above, the General Election Commission (KPU) and the Election Supervisory Body (Bawaslu) in carrying out their duties and functions as election organizers must always submit and comply with DKPP regulations. Furthermore, it is stated in article 2 of the Election Organizer Honorary Council Regulation Number 2 of 2017 concerning the Code of Ethics and Guidelines for the Conduct of General Election Organizers which reads "Every election organizer must work, act, carry out duties, authority and obligations as an election organizer based on the code of ethics and guidelines for the conduct of election organizers and the oath / pledge of office".

Article 8 of the Election Organizer Honor Council Regulation Number 2 of 2017 has contained concrete actions that may not be taken by election organizers, for example election organizers must be neutral article 8 letter (a), not accepting gifts in any form from election participants, prospective election participants, companies or individuals that can lead to benefits from the decision of the Election Organizer institution, article 8 letter (g), with these rules it is clear what can be complained to DKPP and which ones cannot.

Looking at current developments, many complaints filed with DKPP regarding violations of the code of ethics by election organizers actually do not meet the material requirements as stipulated in the Regulation of the Honorary Board of Election Organizers of the Republic of Indonesia Number 2 of 2017 concerning the Code of Ethics and Code of Conduct for Organizers. Therefore, this article examines the reconstruction of the principle of legal certainty which is the object of the honorary council of election organizers.

2. Method

This research was conducted using normative research or doctrinal legal research or also known as library research or document studies. It is referred to as doctrinal legal research, because this research is conducted or aimed only at written regulations or other legal materials. Some legal experts argue that normative legal research is the only type or category of research known in law. (Irwansyah, 2020; Suratman & Dillah, 2014).

The technique of collecting legal materials in a normative research is carried out by literature study of legal materials, both primary legal materials, secondary legal materials and tertiary legal materials and or non-legal materials (Dewata & Achmad, 2010). Data analysis is a follow-up after the research materials are collected, and the initial stage of analysis is carried out by processing the available legal literature according to their respective categories. Primary legal materials and secondary materials obtained through library research are qualitative data studied and analyzed qualitatively, then described to explain matters related to the topic of study. The data obtained is organized systematically so as to obtain a comprehensive picture, and by researchers processed using analytical descriptive techniques.

3. Results and Discussion

Elections as a form of popular sovereignty are a means of fulfilling democratic constitutional rights for Indonesian citizens. Law No. 7 of 2017 (Election Law) places KPU as the organizer, Bawaslu as the supervisory committee, and DKPP as the body authorized to hear cases of violations of the code of ethics of general election organizers (Election), all three of which are independent and independent.

The Honorary Council of Election Organizers (DKPP) is an electoral body that has the authority to examine and decide on violations of the code of ethics committed by election organizers. DKPP as an electoral ethics body has an urgency related to its duties as a guardian of electoral principles and ethics. (Arifatuzzahrah & Hasba, 2024) (Syafudin & Sukarna, 2018)

3.1. Code of Conduct for Election Organizers

The independence of election organizers is a top priority of constitutional amendments in the electoral field with the hope that election organizers cannot be intervened by other parties outside the electoral institution. The birth of the provisions contained in Article 22E paragraph (5) of the 1945 Constitution which explains that elections must be carried out by

an institution that handles general election affairs nationally, permanently, and independently shows that the existence of an election organizing body is truly expected to be an independent institution, independent, with integrity, and cannot be intervened either in the process of organizing elections or on various inherent authorities in accordance with the mandated Tupoksi.

In a legal state like Indonesia, which adheres to a civil law legal system, all of which are based on written law, it is very important to produce rules that become a benchmark for election organizers to realize the principle of checks & balances in order to create clean, quality elections and not avoid corruptive nature as the ideals of democracy.

(Kurnia, 2020) The Code of Ethics for Election Organizers contains general provisions, foundations and basic principles of ethics and behavior that aim to maintain the independence, integrity, and credibility of members of election organizers at all levels by being guided by 12 (twelve) principles determined by the Law, among others:

- a. Independence;
- b. Honesty;
- c. Justice;
- d. Legal Certainty;
- e. Order;
- f. Public Interest;
- g. Openness;
- h. Proportionality;
- i. Professionalism;
- j. Accountability;
- k. Efficiency;
- l. Effectiveness;

3.2. Objects and Subjects of Ethical Violations of Election Organizers

In every judicial process, there are known subjects and objects of cases that can be examined, in the context of ethical justice there are *subjectum litis* and *objectum litis* cases at DKPP. First, *subjectum litis* or the subject that can be litigated at DKPP can include a broad sense and can also involve a narrow sense. However, in the regulations on the DKPP Procedural Guidelines, the notion of litigants is limited, so that the handling of cases of alleged violations of the code of ethics of election organizers can realistically be handled and resolved by DKPP. In addition, DKPP in the process first provides strengthening support to Bawaslu and KPU themselves to carry out their functions without having to handle all matters of alleged violations of the code of ethics themselves. Matters that can be resolved first by

Bawaslu and KPU, should not be directly handled by DKPP by ignoring the internal mechanisms of KPU and Bawaslu themselves first. This is reflected in the issuance of technical regulations owned by Bawaslu and KPU that regulate the process of handling violations of the code of ethics of ad-hoc election organizers.

The principle of legal certainty in the regulations on the Code of Ethics and Code of Conduct of election organizers is very important, to determine which actions can be submitted to the DKPP and which actions of election organizers cannot be filed with the DKPP, so that complaints that go to the Election Organizer Honor Council are complaints that are truly legally grounded and meet the material and formal requirements.

Bawaslu when stating that the complainant's report did not meet the material requirements was in accordance with the article in article 6 paragraph (1) letter (a) which reads "Legal certainty means that in the implementation of the Election, the Election Organizer carries out its duties, functions and authorities in accordance with the provisions of laws and regulations", as the article Bawaslu does not violate because to declare the report meets the material and formal requirements is the authority of Bawaslu based on Bawaslu Regulation Number 7 of 2022 article 15 paragraph (1) reads "Bawaslu, Provincial Bawaslu, Regency / City Bawaslu, Sub-district Panwaslu, or LN Panwaslu compile an initial review of the report no later than 2 (two) days after the report is submitted", paragraph (2) The initial review as referred to in paragraph (1) is carried out to examine a). fulfillment of the formal requirements and material requirements of the report and, b). the type of alleged violation.

That in principle Bawaslu has followed up on the complainant's report, a report that is not registered and / or stopped in the Gakkumdu process, cannot necessarily be declared that the report was not followed up. A report that is not registered because it does not meet the formal and material requirements based on the Initial Study which is then a form of follow-up to the report by Bawaslu as stipulated in Perbawaslu 7/2022 in conjunction with the Decree of the Chairman of Bawaslu 169/PP.00.00/K1/05/2023. A report that has been examined for the fulfillment of formal and material requirements through the Initial Study, Bawaslu has carried out its duties and authorities in terms of following up on a report. (Aspan & Suwandi, 2022)

3.3. DKPP Violation Handling System in Resolving Ethical Violations

DKPP officially becomes a state institution in the realm of enforcing the ethics of organizing elections, this is in accordance with the order of Law Number 15 of 2011 concerning Election Organizers which states that DKPP is included in the function of organizing elections. The presence of DKPP is a solution to problems regarding the integrity and credibility of election organizers. (Salamah & Hadi, 2023)

(Febriant dkk., 2024) The process of conducting an EMB code of conduct hearing is set within a strict legal and ethical framework to ensure integrity and fairness in elections. The process of organizing a code of conduct hearing should include several stages, including:

- a. Complaints, which means that parties who feel aggrieved or find violations submit complaints to DKPP.
- b. Initial Screening, which means initial verification to ensure the complaint meets the formal requirements.
- c. Investigation, is an in-depth investigation by the DKPP investigation team to collect evidence.
- d. The Plenary Session is intended for the examination of evidence and testimony from witnesses and parties involved in a public hearing.
- e. Decision, which means decision making by DKPP which can be in the form of warnings, warnings, or other sanctions.

This process aims to ensure that every decision taken by DKPP is based on strong evidence and comprehensive arguments, thus ensuring fairness and the sustainability of the integrity of the electoral process. In addition, DKPP is also committed to conducting periodic evaluations of the implementation of the Code of Ethics to identify potential weaknesses and make necessary improvements. The purpose of this effort is to maintain the credibility and integrity of election organizers over time.

3.4. Authority and System for Handling Violations of the Election Organizer Code of Ethics

DKPP as an election institution has duties and authorities, as in Article 159 of Law No. 7/2017 which states that DKPP's duties are to receive complaints of ethical violations and investigate, verify, and examine these complaints. DKPP also has the authority to summon the election organizer complained about by the complainant, call the complainant, witnesses or other parties to request an explanation, impose sanctions on the complainant if proven guilty, and give a decision on the complaint. (Abhiseka, 2025)

In 2017, through Law No. 7/2017 on General Elections, DKPP was deemed important to strengthen its secretariat. If in Law No. 15 of 2011, the DKPP secretariat was assisted by the Secretary General of Bawaslu. Law No. 7 of 2017 mandates that the DKPP secretariat be led directly by a Secretary. Other additional orders include the Regional Examination Team (TPD), which was previously only formed based on DKPP regulations to be mandated by law even though it is ad hoc. TPD functions as judges in the regions to assist and / or become accompanying judges for DKPP members in conducting examinations of violations of the election organizers' code of ethics in the regions. (Nurdin, 2019)

The authority of the Honorary Council of Election Organizers as an election organizer is regulated in Law Number 15 of 2011 concerning Election Organizers article 1 paragraph 22, which reads: The Honorary Board of Election Organizers, hereinafter abbreviated as DKPP, is an institution whose task is to handle violations of the code of ethics of election organizers and is an integral part of the function of organizing elections. (Aldi dkk., 2019)

Studies related to ethical objects that can be complained to the DKPP need to be seen in depth, this needs to be done to maintain the dignity of the Honorary Council of Election Organizers. However, towards that direction, there also needs to be normative studies related to what exactly are the ethical objects that can be complained to the Honorary Council of Election Organizers. For example, every election organizer is obliged to obey and respect the legal process, which at a certain point is higher than the ethical enforcement process.(Shadli dkk., 2023)

DKPP has an important role in protecting the process of organizing a good election. In addition to ensuring that election organizers must carry out their duties and authorities based on the provisions of the 1945 Constitution and other laws and regulations as described above. DKPP also has the role of protecting election organizers from attacks that can interfere with the implementation of their duties and authorities(Situngkir, 2023) . If DKPP does not provide its own limits to the ethics enforcement process for organizers, it is not impossible that all organizers' actions will be considered violating ethics. Moreover, the point of view of ethical actions for state organizers can be very subjective. So that if the report against state organizers is not regulated dismissal process, it is not impossible that the ethics report against state organizers will become a space to kill the independence of state organizers and make DKPP as another alternative to undermine the independence of election organizers.(Baihaki & Rachman, 2023)

4. Conclusion

Based on the explanation above, it can be concluded that the absence of clear norms related to ethical objects that can be complained about to the Honorary Council of Election Organizers, today, the cases complained about by the Complainants to DKPP are only a matter of differences in views between the complainants and election organizers. As long as the election organizer works based on the procedures set by the laws and regulations, but the decision is different from the public view, it cannot be an ethical object. The Honorary Council of Election Organizers needs to verify the complaints that go to DKPP, material verification is one of the tools owned by DKPP to see whether the complaint has clear legal reasons or not.

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