

Position and Legal Certainty in the Decision of the Honorary Board of Election Organizers (After the Constitutional Court Decision Number 32/PUU-XIX/2021)

Dedi Supriyadi¹, Ende Hasbi Nassaruddin², Beni Ahmad Saebani³
^{1,2,3} Universitas Islam Negeri Sunan Gunung Djati Bandung

Article Info

Article history:

Received Dec, 2023
Revised Dec, 2023
Accepted Dec, 2023

Keywords:

Dick and Carey Learning Model,
Student Skills, Teacher Role

ABSTRACT

The purpose of this study is to find out the legal regulations regarding legal certainty in the decision of the honorary board of election organizers based on the decision of the Constitutional Court Decision Number 32/PUU-XIX/2021). The method used in this study is the Normative Juridical approach. Juridical-normative research was chosen because it affirms the existence of ethical norms and legal norms as part of the norm system that applies in society. The results of the study concluded that the Urgency of DKPP is a vital and significant institution to deal with violations of the Election Organizer's code of ethics and is a unified function of the Election Organizer; The nature of the legal certainty of the decision of the Election Organizing Honor Board (DKPP) after the Constitutional Court decision Number 32/PUU-XIX/2021 is not recognized and confirms that the DKPP is not a judicial institution, so the DKPP decision is a decision of a State Administration official who can be the object of a lawsuit at the State Administrative Court; and it is necessary to establish an ethical court through law, not only limited to DKPP. where enforcement is carried out through an independent, impartial, and open judicial process, namely the Court of Law for legal matters, and the Court of Ethics for ethical issues.

This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



Corresponding Author:

Name: Dedi Supriyadi
Institution: Universitas Islam Negeri Sunan Gunung Djati Bandung
Jalan A.H Nasution No. 105, Cipadung, Cibiru, Kota Bandung, Jawa Barat 40614
Email: dedisupriyadi@uinsgd.ac.id

1. INTRODUCTION

Indonesia is a democratic country. Since independence on August 17, 1945, the 1945 Constitution has unequivocally portrayed Indonesia as a democratic country. Therefore, in his leadership mechanism the president must be responsible to the MPR, which is a body formed based on being elected from the people and by the people. Thus, hierarchically the people are the holders of the leadership of the State through the mechanism of representatives elected in General Elections. Since the enactment of Law number 22 of 2007 concerning the Implementation of General Elections, Pilkada is included in the election regime, so it is officially named Regional Head and Deputy Regional Head Election or called *Pemilukada*[1]

Since the 1945 Constitution was amended, related to Regional Head Elections (*Pilkada*), which is contained in article 18 paragraph (4) of the 1945 Constitution on Regional Government which reads "Governors, Regents, and Mayors as heads of provincial, regency and city local governments are democratically elected". Regional elections (*Pilkada*) are conducted directly by eligible residents of local administrative regions[2]. General elections as a means of people's sovereignty to elect members of the DPR, members of the DPD, President and Vice President, and to elect members of the DPRD, which are carried out directly, publicly, freely, secretly, honestly and fairly in the Unitary State of the Republic of Indonesia[3].

The control mechanism for Election Administrators is regulated in Law 7 of 2017 concerning General Elections. In Article 1 number 24, it is stated that the Honorary Board of Election Organizers, hereinafter abbreviated as DKPP, is an institution tasked with handling violations of the Election Organizer's code of ethics. DKPP determines the decision on complaints made by the parties. In Article 458 of Law Number 7 of 2017, Article 458 paragraph (13) of the DKPP decision is final and binding[4] Violation of

the Election Organizer Code of Ethics is a violation of the ethics of an election organizer based on an oath and/or promise before carrying out duties as an election organizer.

The duties of DKPP are mentioned in Article 156 paragraph (1), namely: 1. receiving complaints and/or reports of alleged violations of the code of ethics committed by the Election Organizer; and 2. conduct investigations and verifications, as well as examination of complaints and/or reports of alleged violations of the code of ethics committed by the Election Organizer[5]. Furthermore, DKPP has the authority to, among others: 1. summon Election Organizers suspected of violating the code of ethics to provide explanations and defenses; 2. summoning whistleblowers, witnesses, and/or other related parties for questioning, including for documents or other evidence; 3. sanction Election Organizers who are proven to violate the code of ethics; and 4. terminate violations of the code of ethics (Article 159 paragraph (2)). The subject of handling DKPP cases (*subjectum litis*) consists of: Complainant and Respondent.[6]

As the stages of election implementation progress, there are also many ethical cases that befall election organizers. In view of this, DKPP as the institution authorized to handle ethical issues of election organizers, can lose the spirit and function of ethics enforcement. On this basis, the author has a concentration to be able to study and research on legal certainty against the decision of the Honorary Board of Election Organizers in deciding violations of the Election Organizer's code of ethics[7].

2. METHODS

The research approach in this study uses normative juridical with the main material in the form of theories, literature studies or principles and laws and regulations. According to Soerjono Soekanto, normative juridical is legal research carried out by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem under

study[8]. The analysis of research on the final and binding of the Decision of the Honorary Board of Election Organizers is reviewed from. Constitutional Court Decision Number 32/PUU-XIX/2021 and Law Number 7 of 2017 concerning Elections by synthesizing materials obtained from written law[9]. To synthesize that is by making a classification of the legal material to make it easier to conduct analysis. The legal material obtained is then proceeded to the stage of discussion, examination and grouping in certain parts to be processed into information data. The results of the analysis of legal materials will be interpreted using interpretive methods, systematic and grammatical [10].

3. RESULTS AND DISCUSSION

3.1 Historical Facts of DKPP's Birth

The implementation of elections is the will of the Indonesian nation to establish itself as a democratic country. The first election in 1955 was held in a situation where the Indonesian nation was maintaining its independence. In general judgment, the 1955 election was an ideal election because it was democratic. On the contrary, the elections held during the New Order era were merely ceremonial to maintain power, by engineering the rule of law, system, procedures, and election results at once. The current reforms succeeded in correcting these undemocratic electoral practices. The first elections in the reform era were held in 1999, not only aimed at building a democratic Indonesia, but also expected to be able to lay the foundation of leadership that favors efforts to achieve prosperity and justice for the people.

Every election often arises election problems or violations. These problems arise due to dissatisfaction with the election organizer, in this case the Election Organizing Commission (KPU), such as inappropriate decisions/policies that harm election participants, lack of accuracy in counting votes, to indications of partiality to one of the election participants, such as identity forgery, intimidation and political money to voters.

These problems, if left unchecked and not given a clear and firm mechanism (legal mechanism), disrupt the smoothness / success of the election and result in low credibility and legitimacy of the election. In turn it can threaten and ignore the constitutional rights of election participants and society in general[11].

After the elections in 1999 The second election of the reform era took place in 2004, at that time there were still many violations. Although there are many violations of regulations and violations of the code of ethics committed by the KPU is not very responsive to follow up and only relies on the results of court decisions. The third election in the reform era, namely in 2009, was intended to further improve from previous elections, but in the 2009 election still experienced various violations.

The birth of Law No. 15 of 2011 concerning Election Organizers (hereinafter abbreviated as Law No. 15 of 2011), mandated the establishment of a new state institution, namely the Honorary Council for Election Organizers (hereinafter abbreviated as DKPP). DKPP is an institution in charge of handling violations of the Election Organizer's code of ethics and is a unit of Election Organizer functions. DKPP has the duty and authority to uphold and maintain the independence, integrity, and credibility of the Election Organizer. More specifically, DKPP was formed to examine, adjudicate and decide complaints/reports of alleged violations of the code of ethics committed by members of the KPU, members of Bawaslu, and the ranks below.

3.2 Power and Implementation of DKPP Decisions Against Violations of the Election Organizer's Code of Ethics

Based on Law Number 15 of 2011 concerning Election Administration, subjects who can become litigants in DKPP are members of the KPU, members of the Provincial KPU, members of the District/City KPU, members of the KDP, members of PPS, members of PPLN, members of KPPS, members of KPPSLN, members of Bawaslu,

members of the Provincial Bawaslu and members of the District/City Panwaslu, members of the District Panwaslu, members of Field Election Supervisors and members of Foreign Election Supervisors. DKPP Regulation Number 2 of 2012 concerning Guidelines for Berac Ara Code of Ethics for General Election Organizers, Article 9 states that "If the Complainant and/or the Reported Person is an Election Organizer who serves as (a) a member of the District/City KPU or District/City KIP; (b) members of the District/City Panwaslu; (c) KDP members; (d) members of the District Panwaslu; (e) PPS members; (f) members of the Field Election Supervisor; or (f) KPPS members, Complaints and/or Reports submitted to DKPP through the Provincial Bawaslu". Bawaslu Province conducts research on the completeness of the administration of the Complaint and/or Report.

The subjects that can become litigants as complainants and/or reported parties in DKPP are very broad and numerous. Although DKPP regulations determine the organizers of district/city level elections and under the complaint and research of the file through Bawaslu. In fact, matters that can be resolved alone or that should be handled through internal mechanisms must first be handled by the KPU and Bawaslu, should not be directly handled by the DKPP. The birth of Law No. 15 of 2011 concerning Election Organizers (hereinafter abbreviated as Law No. 15 of 2011), mandated the establishment of a new state institution, namely the Honorary Council for Election Organizers (hereinafter abbreviated as DKPP). DKPP is an institution in charge of handling violations of the Election Organizer's code of ethics and is a unit of Election Organizer functions. DKPP has the duty and authority to uphold and maintain the independence, integrity, and credibility of the Election Organizer. More specifically, DKPP was formed to examine, adjudicate and decide complaints/reports of alleged violations of the code of ethics committed by members of the KPU, members of Bawaslu, and the ranks below.

In the Election Organizing Law and DKPP Regulations regarding the submission of cases of violations of the code of ethics by election organizers, there is no specific time limit. Even though the violation has occurred for a long time and the election results have been legally ratified, it can still be submitted to the DKPP if there are allegations of violations of the code of ethics committed by the election organizer. DKPP as an ethical institution is true that there is no time limit regarding complaints of a violation of the code of ethics. So the object of the case in DKPP does not depend on the "tempus delicti" or the time when an act violates the code of ethics. This is because the issue of violation of the code of conduct of the KPU and Bawaslu officials with the election process and even with the issue of disputes regarding the results of the election, cannot be related based on the principle of causation or causality.

3.3 Legal Certainty of DKPP Decision After the Issuance of Constitutional Court Decision Number 32/PUU-XIX/2021

Legal certainty of DKPP Decision lies in two words, namely final and binding. These two words are used as parameters that the DKPP Decision is certain and there is no other interpretation unless implemented. It is true that the word Final in the decision of the Honorary Board of General Election Organizers means that the decision is no longer available for other legal remedies or further legal remedies after the enactment of the DKPP decision since its implementation and pronounced in the DKPP open plenary session which is open to the public. In other words, that the final decision is the end of a decision so that there is no legal room to test it again in the next court and the DKPP decision is final means that it can be implemented immediately.

While binding the decision of the General Election Organizing Honor Board is that a decision of the General Election Organizer Honor Board as a decision is directly binding and coercive so that all state power organizing institutions and including judicial bodies are bound and obliged to

implement the decision of the General Election Organizing Honor Board as the decision should be decided by the DKPP. The implementation of the DKPP decision which has been final and binding must then be followed up as appropriate by the KPU, Bawaslu, as well as by the Government and bound institutions.

Thus, the meaning of the final and binding decision of the DKPP means that it has been closed again to all possibilities for legal remedies afterwards. When the DKPP decision was pronounced in a plenary session, then the legally binding force (binding) was born. The final phrase of the DKPP ruling is that the judgment is immediately enforceable. In other words, after getting a verdict, there is no longer a judicial forum that can be taken.

Reviewed according to the Constitutional Court decision Number 32/PUU-XIX/2021, it explains a clearer definition of the final and binding DKPP decision. What is interpreted as final and binding for the President, KPU, Provincial KPU, Regency / City KPU and Bawaslu is that the President, KPU, Provincial KPU, Regency / City KPU and Bawaslu only follow up on the DKPP decision which the product can be the object of a TUN court lawsuit. According to the decision of the Constitutional Court Number 32 / PUU-XIX / 2021 that the phrase "final and binding" in article 458 paragraph (13) of Law Number 7 of 2017 concerning Elections is interpreted as binding for the President, KPU, Provincial KPU, Regency / City KPU and Bawaslu is a decision of TUN officials which has a concrete, individual and final nature, so that it can be used as an object in the TUN court. The Constitutional Court affirmed that the DKPP's position is not as a judicial institution, but as an institution equivalent to the KPU and Bawaslu. With the binding design of the DKPP decision, the

President as the party given the power to dismiss members of the KPU Commissioners has the obligation to issue Presidential decrees whose content is an explanation related to the dismissal of the KPU Commissioners. Thus, the KPU Commissioner cannot carry out legal remedies to challenge the DKPP decision. What can be done is to carry out legal remedies through a lawsuit to the PTUN to cancel the Presidential Decree, the content of which is to dismiss the KPU commissioner concerned.

It is reviewed according to Law Number 7 of 2014 concerning General Elections, that in Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, that the decision of the DKPP is final and binding, meaning that the decision cannot be re-attempted and can be implemented immediately. Final means that there is no more trial that can be pursued for legal remedies, and binding means that the decision of the DKPP is a decision that can be directly implemented. In the explanation of Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, that the explanation of article 458 paragraph (13) does not contain the definition of phrases "final and binding" it. The explanation of the article only mentions "self-explanatory". Even though a decision that is interpreted to have a final and binding understanding is a decision that cannot be further legal remedies and the decision can be immediately implemented because it binds a decision. The vagueness of the interpretation of the final and binding phrase of the DKPP decision in article 458 paragraph (13) of Law Number 7 of 2017 concerning general elections resulted in multiple interpretations and regulatory disputes with the administrative court.

Table 1. Final and Binding Differences

Final	Binding
The final phrase is interpreted as the last of the series of examinations	The binding phrase has the meaning of being "tighten", "unite"

Final means that the settlement of the case has been completed and ended	The meaning of the word binding is that the judgment is coercive and as something to be carried out by the party obliged to do so.
--	--

Source: *Processed By Researchers from Various Sources, 2023*

Starting from this meaning, the final and binding phrases, interrelated with each other, which means the end of a process in court, have the power of tightening or uniting all wills and cannot be rebutted. Thus, if it is related to the final and binding decision of the Honorary Board of Election Organizers, it means that all possibilities for legal remedies have been closed. The final and binding decision of DKPP does not give the opportunity to parties who feel that the decision contains injustice values and are dissatisfied with the decision to take other legal routes. According to the principle of *res judicata pro veritae habetur*, which states that a principle that is no longer possible for legal remedies, is declared as a judgment that has definite legal force. So that the final and binding phrase of the DKPP decision that is final and binding must be viewed as a decision that has permanent legal force (in *cracht van gewijsde*).

Election. After the DKPP hearing, several problems arose, namely over the decision related to ethical violations, the DKPP dismissed Evi Novida Ginting from her position. The decision was deemed unacceptable in the legal system in Indonesia, as KPU commissioners were appointed based on statutory procedures. Thus, the dismissal carried out must involve legal procedures. The involvement of the legal system shows that law enforcement will have binding force when the case is tried by state judicial bodies such as the Supreme Court and the Constitutional Court.

The nature of the decision of the Election Organizing Honor Board (DKPP) is not the same as the final binding in general judicial institutions. Therefore, DKPP is an internal instrument for election organizers authorized by law. Final and binding DKPP decisions are binding, for the President, KPU, Provincial KPU, Regency / City KPU or Bawaslu who carry out DKPP Decisions.

Thus, the procedures for checks and balances in DKPP still exist. According to Topo, the final and binding decision of the DKPP which is not limited in its understanding, causes that the decision of the TUN Court, which is a follow-up to the DKPP decision lawsuit, is not obeyed by the DKPP. DKPP's misconception of the existence, nature, and function of this PTUN decision can greatly harm KPU members and Bawaslu. This is because the DKPP does not consider that the decision of the PTUN judicial institution exists and applies. In the legal system as well as in other countries, judicial decisions must be respected and enforced unless they can be rebutted. Furthermore, other institutions have the responsibility to follow up on the DKPP decision. DKPP must give respect to the decision of the PTUN or other judicial decisions if there is involvement with other institutions[12].

Thus, the institutionalization of ethical justice can be an integrated function of adjudication of ethical violations so that it will give birth to legal certainty. It can be concluded that the final and binding decision of DKPP is not substantially similar to the meaning of final and binding on a decision in court. This shows that the status and position of the DKPP are interpreted from an administrative point of view only, so the decision is considered unable to use judicial equipment. Thus, the DKPP can be categorized as a quasi-judicial institution and the nature of its decisions is not similar to the nature of major court decisions. Therefore, the final and binding decision of the DKPP can only be interpreted with a recommendation because the dismissal of Evi Novida Ginting Manik should have been carried out by the relevant institution that appointed Evi Novida Ginting Manik to become a member of the KPU. With sentences

3.4 The urgency of special rules governing the ethical decisions

*of Election Administrators
brought into the realm of legal
justice*

This discussion basically analyzes how far between legal, ethical and moral relations. This study can basically be analyzed with a positivist approach. That legal positivism overshadows the legal system applied in Indonesia in the legal concept of "rechtsstaat", according to valid legal positivism is formalized law, law is not a social or moral fact that must be avoided by non-legal elements. The doctrine of positivism was born as a rejection of the school of natural law. They reject natural law because it is considered too metaphysical and idealistic, thus failing to provide legal certainty. On the other hand, if positivism separates law from morality, the current of natural law holds that society, morality, and positive law are inseparable.

Mainstream positivism is interesting to be examined together with the Indonesian socio-cultural context in the system that supports the ethics of election organizers that in the ethical enforcement system of election organizers in Indonesia there is an integrative relationship between law and morality in the context of legal substance. Moreover, the constitutional distinction between morality and law cannot be attached. Even the moral values in the Regulation of the Honorary Board of Election Organizers Number 2 of 2017 and the Regulation of the Honorary Board of Election Organizers Number 3 of 2017 as amended by the Regulation of the Honorary Board of Election Organizers Number 3 of 2019 as formal laws that are counted as moral rights. However, in its implementation in the field, the integrative relationship becomes an independent whole, giving rise to two different institutions. Each institution is independent in its handling, regarding ethical violations and violations of law[13].

Free elections (hereinafter referred to as elections) are regulated in the Constitution of the Republic of Indonesia Year 1945 as a characteristic of the rule of law. Article 22E paragraph (1) states that elections are based

on the principles of direct, public, free, secret, honest and fair. Elections are held every five years. In addition, election organizers are regulated through Article 22E paragraph (5), namely the General Election Commission is national, permanent and independent. Article 1 point 7 of Law Number 7 of 2017 concerning General Elections states that the General Elections Commission (KPU), the Election Supervisory Board (Bawaslu), and the Election Organizing Honor Board (DKPP) are election organizing units. The integrity of the electoral process and results is a fundamental issue in conducting democratic elections based on electoral principles, so the integrity of the organizers regarding political attitudes and actions is a very important factor. The concept of electoral integrity is a demand for value politics, in this case it requires consistency towards good values concerning ethics, morals, including steps, a method and universal value principles [14].

There are ethical values that govern election organizers and are specifically regulated in real terms in the regulation of the Honorary Board of Election Organizers Number 2 of 2017 concerning the Code of Ethics and Conduct of Election Organizers. These ethical values are regulated in Article 157 paragraph (1) of Law Number 7 of 2017 which is compiled and determined by the Honorary Board of Election Organizers. This Code of Conduct guarantees the independence, integrity, and trust of members of the General Election Commission and the Election Supervisory Board at all levels. The Honorary Board of Election Organizers has the authority to investigate and prosecute members of the General Election Commission and the Election Supervisory Board who violate the Code of Ethics. This is regulated in Article 5 paragraph (2) of Law Number 7 of 2017. The Honorary Board of Election Organizers runs the process of enforcing the Code of Ethics with the aim of making the process fast, easy and open. Based on the trial procedures stipulated in the Election Organizer Honor Board Regulation Number 3 of 2017, which was amended by the Election Organizer Honor Board Regulation

Number 2 of 2019 as its formal law. The establishment of these guidelines provides evidence that the Honorary Board of Election Organizers is legally an ethical judicial institution for election organizers. This perfects the use of the concept of court of ethics based on the rule of ethics and juxtaposed with the rule of laws that have been used.

In a supportive system, there is a constitutional line between morality and law in the ethics of Indonesian election organizers. Although positivist teachings are the main official reference in the concept of a constitutionally governed rule of law, and ethical values are considered moral, at the actual level of law enforcement there are two different bodies involved in handling violations of ethics and law. If it is proven that the election organizer has committed unlawful acts, especially criminal acts such as accepting bribes or deliberately falsifying the results of the vote count, then the act itself is immoral and prohibited by the Election Organizer Honor Board Regulation in Article 37 paragraph (4) point c, namely the Defendant/Report is dismissed as permanent as an Election Organizer. Crimes committed are treated under criminal proceedings in local courts and are subject to criminal penalties in accordance with the Criminal Code (KUHP).

General Election Organizer, which has been amended by Election Organizer Honor Board Regulation Number 2 of 2019 as its formal law. With the establishment of these norms, there are indications that the DKPP is an ethical judicial institution for election administrators in accordance with the law. This is one form of refinement of the concept of court of ethics based on the rule of ethics and then juxtaposed with the rule of laws that have been used. The use of the concept of "the rule of law and the rule of ethics simultaneously is one way to build a healthy democracy in state life. So on the contrary, if a democracy is built only using the rule of law system, it will result in the democratic system that is run will only be procedural and formal. Therefore, it requires a system of ethics (rule

of ethics) along with the continued organization and enforcement of the legal system (rule of laws) to ensure that the democratic system that is built is also substantial.

As explained above, from the perspective of legal philosophy, the relationship between law and morality lies in the conflict between positivism and natural law. The fundamental question concerns whether there is a relationship between the two provisions affecting the existence and effectiveness of the rule of law binding citizens. But law and morality are much broader than just a battle of ideas between positivism and the flow of natural law. The legal and moral relationship also refers to the relationship between two rules that form a mutually beneficial functional relationship between law and morality. That is, there is a reciprocal influence between law and morals in various aspects of human life, there is a moral contribution to the law and a legal contribution to morals. In the ethical enforcement system of election organizers as explained above, the relationship between law and morals in the view of natural law and legal positivism in Indonesia shows a unique relationship in the scope of legal substance and shows an integrative relationship. While at another level, namely at the level of legal structure shows a relationship that stands alone, even more broadly shows a reciprocal relationship.

In this concept of the rule of law an integrative relationship of morals and ethics based on the validity and enforceability of written positive law; officially promulgated. It is considered irrational, non-empirical, and undeniable for general application; therefore, the content of the law is desirable as a purely positivist concept. The ethical system of Indonesian election organizers presents a harmonious or non-dichotomous relationship that negates each other, as discussed through the channels of natural law and positivism. First of all, this can be seen from various sources, from basic to operational. This can be proven by the presence of the Election Organizer Honor Board as an ethics court in

the election organizer ethics system that is binding to enforce the Code of Ethics and Code of Conduct for Election Organizers in accordance with Election Organizer Honor Board Regulation Number 2 of 2017, Election Organizer Honor Board Regulation Number 3 of 2017 as amended by Election Organizer Honor Board Regulation Number 2 of 2019 as a formal legal basis.

So, the character of a positive law according to Austin is sanctions, obligations, sovereignty and orders. That the true law is a positive law which is a sovereign commandment, thus implies the existence of an obligation to obey the commandment, whether the command is good or not, if it is not implemented or violated it gives rise to sanctions. Austin's theory of classical legal positivism became an important figure on legal and moral relations, law taking a diametrical position on issues of morality. There is a concrete separation between law and morals. Austin's classic legal positivism is a reaction to the rejection of natural law. The creed of Divine participation in the world and the moral principles of natural law Thomas Aquinas rejected outright because they were considered transcendent, ahistorical and unscientific. The ultimate goal of Austin positivism is legal certainty; hence it is to achieve it that law is given a special position of separation from moral.

Based on this description it can be understood that there is a contradiction between positive law and morality within its more particular autonomous scope, based on its validity. As seen in the debate between natural law and legal positivism in the history of legal philosophy over time, it seems that there is no common ground and becomes a permanent dispute. Legal naturalism demands that the enactment of positive law be considered based on the value of the substance of the regulation (material law); if the content of a positive law is in sync with idealized laws (moral principles) whose level is presumed above that of positive law. While Legal Positivism considers the enactment of positive law not in its material terms as the opinion of the School of Natural Law, but in

terms of its formality. When a law is obeyed, according to the positivists, it is not seen by its good or just content, but because it has been enforced by a legitimate ruler.

Meeting the standards of democratic elections set by the Global Commission on Elections, Democracy and Security, one of the main challenges in conducting democratic elections is maintaining transparency and fairness, conducting elections and gaining public trust. The Code of Ethics was developed as a code of conduct that integrates ethical, philosophical and moral principles to uphold ethics, integrity, honor, independence and reliability of election organizers, acts and/or words that are appropriate or inappropriate for election organizers as stipulated in article 1 point 4 of the Regulation of the Honorary Board of Election Organizers Number 2 of 2017 concerning the Code of Ethics and Code of Conduct for General Election Organizers. The importance of the election organizer ethics enforcement system in holding democratic elections is recognized and strengthened in General Election Law Number 7 of 2017. This gave birth to the Honorary Council of Election Organizers (DKPP), a body that must be involved in the meaning and complexity of the study of good and correct electoral philosophy. DKPP in the election law as a manifestation of the soul of the Indonesian nation (*volksgeist*) that Pancasila must be recognized as the source of all legal sources to deal with violations of the code of ethics committed by election organizers [15].

The procedure for the Honorary Board of Election Organizers to carry out the trial of the code of ethics using the principle of fast, simple, and open in the concept of court of ethics based on the rule of ethics which has been juxtaposed with the concept of rule of laws, coupled with the concept of electoral philosophy that creates the Honorary Board of Election Organizers in the Election Law as a manifestation of the soul of the Indonesian nation which must recognize Pancasila as a source of law in charge of handling violation of the code of ethics for conducting elections, shows the existence of the most basic aspect

that refers to the nation's ideology, namely Pancasila. Likewise, the Constitution of the Republic of Indonesia Year 1945 which not only contains constitutional law, constitutional ethics is also reflected in TAP MPR Number VI / MPR / 2001 which is a political direction in the nation and state. TAP MPR Number VI / MPR / 2001 which was later regulated in Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Establishment of Laws and Regulations is still in effect. Therefore, in addition to being understood as a source of law, Pancasila must also be understood as a source of ethics [16].

Thus, it can be understood that the urgency and existence of DKPP as the holder of the code of ethics is at a substantive level, the relationship between law and morality in the ethical enforcement system of election organizers presents an integrative relationship that does not distinguish constitutionally between morality and law. In legislation, values that are considered moral are legal. This can be seen from many perspectives, from the most basic to operational issues evidenced by the presence of the Election Organizer Honor Board (DKPP) as an ethics court in the Election Organizer Ethics Enforcement System. DKPP exercises its authority based on the provisions of DKPP Regulation as a material law, namely the code of ethics and code of conduct for election organizers stipulated in the Regulation of the Honorary Board of Election Organizers Number 2 of 2017 and the Regulation of the Honorary Board of Election Organizers Number 3 of 2017 as amended by the Regulation of the Honorary Board of Election Organizers Number 2 of 2019 as its formal law, which is guided by Pancasila, the Constitution of the Republic of Indonesia Year 1945 and TAP MPR Number VI / MPR / 2001 concerning the Ethics of National and State Life. Whereas at the level of implementation in the field and actual execution, integrative relationships transition to independent relationships. This is seen in the enforcement or handling of moral and ethical violations and is considered independent because of the

dichotomy between violations of law and violations of ethics. This led to the emergence of two separate independent institutions to deal with ethical violations and violations of the law. The decision of the Honorary Board of Election Organizers, like any court ruling, is binding and final. The handling of ethical violations that lead to violations of the law will be decided independently by the court [16].

4. CONCLUSION

The urgency of DKPP is a vital and significant institution to deal with violations of the Election Organizer's code of ethics and is a unified function of the Election Organizer. DKPP has the duty and authority to uphold and maintain the independence, integrity, and credibility of the Election Organizer. More specifically, DKPP was formed to examine, adjudicate and decide complaints/reports of alleged violations of the code of ethics committed by members of the KPU, members of Bawaslu, and the ranks below. The nature of the legal certainty of the decision of the Election Organizing Honor Board (DKPP) after the Constitutional Court decision Number 32/PUU-XIX/2021 is that it is not recognized that the decision has legal certainty because the word final and binding generally only exists judicial institutions. DKPP is only an internal instrument for election organizers authorized by law. Final and binding DKPP decisions are only binding, for the President, KPU, Provincial KPU, Regency / City KPU or Bawaslu who implement DKPP Decisions.

Thus, the procedures for checks and balances in DKPP still exist. In the Constitutional Court decision Number 32/PUUXIX/2021, it confirms that the DKPP is not a judicial institution, so the DKPP decision is a decision of a State Administration official who can be the object of a lawsuit at the PTUN. It is necessary to establish an ethical court through the Law, not only limited to the DKPP. In this case, the construction of the ethical court is formed as a state institution that has the function of adjudicating

violations of ethics of state administrators. The ethical judiciary established in the law must be equipped with the final and binding deciding authority. The establishment of an ethical court can be done through the fifth amendment to the 1945 Constitution in which the regulation regarding the institutionalization of ethical justice is contained in the constitution so that it becomes an important organ of the constitution in overseeing the ethics and behavior of state officials. The

institutionalization of ethical justice in the Judicial Power family is not impossible but a necessity by looking at the development of the rule of ethics. as an effort to implement a joint positivist approach between "The Rule of Law" runs based on the "Code of Law", while "the Rule of Ethics" runs based on the "Code of Ethics", where enforcement is carried out through an independent, impartial, and open judicial process, namely the Court of Law for legal issues, and the Court of Ethics for ethical issues.

REFERENCES

- [1] M. I. Nasef, "Studi Kritis Mengenai Kewenangan Dewan Kehormatan Penyelenggara Pemilu Dalam Mengawal Electoral Integrity Di Indonesia," *Jurnal Hukum Ius Quia Iustum*, vol. 21, no. 3, pp. 378–401, 2014.
- [2] A. Fadlian, "Pengaruh Putusan Dewan Kehormatan Penyelenggara Pemilihan Umum terhadap Hasil Pemilihan Gubernur Lampung 2014," *FIAT JUSTITIA: Jurnal Ilmu Hukum*, vol. 10, no. 4, pp. 777–794, 2016.
- [3] E. K. Sari, "Kepastian Hukum Putusan Penyelesaian Sengketa Panitia Pengawas Pemilihan (PANWASLIH) Kabupaten Deliserdang Pada Pemilihan Kepala Daerah Kabupaten Deliserdang Tahun 2018 (Studi Putusan Sengketa Proses Pemilihan Bupati Dan Wakil Bupati Di Bawaslu Kabupaten Deliserdang Tahun 2018)," *Jurnal Hukum Al-Hikmah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, vol. 2, no. 1, pp. 87–112, 2021.
- [4] C. E. Y. Kurniawati, "Tinjauan fiqh siyasah terhadap putusan PTUN Nomor 82/G/2020/PTUN-Jkt tentang pembatalan keputusan pemberhentian dengan tidak hormat anggota Komisi Pemilihan Umum," Doctoral dissertation, UIN Sunan Ampel Surabaya, 2021.
- [5] E. Simanjuntak, "Peran Yurisprudensi dalam Sistem Hukum di Indonesia," *Jurnal Konstitusi*, vol. 16, no. 1, pp. 83–104, 2019.
- [6] M. Y. Yusuf, "KEWENANGAN DEWAN PENGAWAS KOMISI PEMBERANTASAN TINDAK PIDANA KORUPSI (KPK) DALAM PEMBERIAN IZIN PENYADAPAN, PENGGELEDAHAN, DAN/ATAU PENYITAAN," Doctoral dissertation, Universitas Hasanuddin, 2020.
- [7] K. I. Maki, "Kewenangan Dewan Kehormatan Penyelenggara Pemilu Republik Indonesia Dalam Memutus Pelanggaran Kode Etik," *Lex Administratum*, vol. 8, no. 4, 2020.
- [8] S. Soekanto, "Penelitian hukum normatif: Suatu tinjauan singkat," 2007.
- [9] P. M. Marzuki and M. S. Sh, *Pengantar ilmu hukum*. Prenada Media, 2021.
- [10] J. Asshiddiqie, *Teori dan aliran penafsiran hukum tata negara*. Ind Hill-Company, 1997.
- [11] M. L. Chakim, "Desain institusional dewan kehormatan penyelenggara pemilu (DKPP) sebagai peradilan etik," *Jurnal Konstitusi*, vol. 11, no. 2, pp. 393–408, 2014.
- [12] Ahmad Siboy and Dewi Cahyandari, "Relasi Putusan DKPP dan PTUN dalam Pelanggaran Kode Etik Penyelenggara Pemilu," *Jurnal Konstitusi*, vol. 19, no. 3, pp. 638–639, 2022.
- [13] J. Asshiddiqie, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)*. Sinar Grafika, 2022.
- [14] S. Luthan, "Dialektika hukum dan moral dalam perspektif filsafat hukum," *Jurnal Hukum Ius Quia Iustum*, vol. 19, no. 4, pp. 506–523, 2012.
- [15] Yovita A. Mangesti, *Moralitas Hukum*. Yogyakarta: Genta Publishing, 2014.
- [16] J. Asshiddiqie, *Menegakkan etika penyelenggara pemilu*. PT RajaGrafindo Persada, 2013.