

Legal Status Of The Election Organizer Ethics Council: An Analysis Of Indonesian Election Systems

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Abstract: This research aims to identify and to analyze the legal status of the Election Organizer Ethics Council in the General Election in Indonesia. This research is a normative research by using statute approach, official records and the judge's verdict which is then described qualitatively. These results indicate that the legal status of the Election Organizer Ethics Council in the general election in Indonesia as supporting organ that serves to uphold ethics (rule of ethics) and guarding democracy. The authority of Election Organizer Ethics Council in the general election in Indonesia sometimes out of authority. Ideal concept of the legal status of the Election Organizer Ethics Council in general elections was as supporting organ which have the infrastructure, secretary general and administrative staff, so it has a public legal entity as similar to the Election organizers serve as code of ethics enforcement agencies code of ethics and can equated to other state institutions.

Index Terms: General Election, Democracy, Checks and Balances

1 INTRODUCTION

General election in the constitution of Indonesia is mentioned as a means of implementing the sovereignty of the people held directly, general, free, confidential, honest, and fair based on Pancasila and the Constitution of the Republic of Indonesia 1945, to elect members of the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional House of Representatives (DPRD), as well as the general election of President and Vice President. At the practical level, the general elections held by the General Election Commission and supervised by the Election Supervisory Agency, as contained in Act No. 15 of 2011 on General Election Organizer. However, as the General Election Commission and the Election Supervisory Agency are unable to perform the duties and authority well, the presence of the Election Organizer Ethics Council in the structuring of a democratic system in the crisis of public confidence in the General Election Organizer, it should be a record in itself. This agency will be called a supporting organ/secondary, if leave with scalpel of Montesquieu politics triad concept, that is the presence of judiciary, executive and legislative powers. The presence of these supporting state institutions agrees or not is reactive development and widespread of the history of the failure of night watchman state concept (*nachwachtaersstaat*). When the role of the minimalist state appears, antithetical such welfare state, which eventually too excessive.

Finally, appeared antithesis again, the presence of "quasi" institution, the real state "support" related to the failure or the comparison of classical concept of triad politics in order to manage the state in democratic dimension. There is a view that the supporting state institution is actually the fourth power holders. This state institution is another form of managing the state, which is also present in large countries that were raised by the concept of triad politics. This institutions is independent, quasi-independent serve as to regulate and/or to supervise, even punished, for example, self-regulatory bodies, independent supervisory bodies even implement the mix-function are actually performed simultaneously. The presence of the Election Organizer Ethics Council (DKPP) is expected to prevent the practice of deviating from democratic values, as the improvement of the nation's morality. The Election Organizer Ethics Council (DKPP) in exercising its constitutional function does not hesitate to remind even dismiss members of the General Elections Commission and the Elections Supervisory Agency if proven to have violated the code of ethics of election, the agency is expected to always active and responsive to any report/complaint of violations of the code of ethics which must still bases on the existing standard rules and regulations. The Election Organizer Ethics Council (DKPP) already sit in on judgment more than 1.597 cases of alleged violations of the code of ethics which submitted by public, including the written warning even deposition to the General Election Commission, Elections Supervisory Agency either central, provincial, district/cities in Indonesia. To maintain the honor and dignity of General Election is democratic, the Election Organizer Ethics Council (DKPP) keep guarding democratization in the context of checks and balances among institutions of General Election Organizer. As a new state institution. In conducting its power, the supporting agency should be based also on the norms of authority, because the norm of authority as a basis of validity for government conduct, in need of a validity (legitimacy) that can justify such action. In modern states based on the democracy governance system, the validity can be justified if it is based on the law, because the law is a manifestation of a public's consensus that gives validity to the partial and/or a group of people to power. The power to assist the needs and interests of many different people in order to ensure the survival. Basically, the process of democratic which was built

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and developed can generate public trust through a reliable mechanism process. Always encourage the state institutions that administer the public interest, can be entirely trustworthy people because experience has always shown people often do not trust the process and results of election.

2 IDENTIFICATION OF THE ISSUE

As described above, the problem of research in this article is the extent of the urgency of the Election Organizer Ethics Council (DKPP) in the General Election in Indonesia.

3 METHOD OF RESEARCH

The type of research in this article is a normative-legal research or also called as doctrinal research. This legal research was conducted by examining library materials or secondary and primary materials. The approach used in this study was 1) Statute approach, an approach by examining all relevant laws and also concerned regulation with the legal issues. The results of examination are argued in the form of laws study; 2) Conceptual approach, an approach that starts from the views and doctrines that developed in the jurisprudence. This understanding will provide a basis for researchers to construct legal arguments to resolve the issues faced.

4 ANALYSIS AND DISCUSSION

4.1 The Legal Status of the Election Organizer Ethics Council in the General Election in Indonesia

Before the author discusses more about how the legal status of the Election Organizer Ethics Council and how the importance of the General Election in Indonesia, first author outlines the status of the Election Organizer Ethics Council (hereinafter referred DKPP) in the constitutional system in Indonesia. The Election Organizer Ethics Council located in the capital of the Republic of Indonesia as one of the supporting institutions. The constitutional system is a reciprocal relationship between the state institutions are regulated in the constitution, thus to see how the institutional system in a country then must determine what state institutions are regulated in the constitution. On the basis character the provision of constitutional amendment that made most constitutions contain extensive state powers to be undertaken by an institution. In the development of the constitutional history of the Republic of Indonesia, the amendment of the basic law (constitution) of 1945 to be very basic (significant). This can be seen with the establishment of several state institutions (new) or change the essence of the state institutions (old), and even eliminated. In addition, the division of authority between state institutions (new) and state institutions (old) changed fundamentally. Talking about state institutions it means talking about the fittings that exist in a country. Conceptually, the purpose of the establishment of state institutions or fittings is in addition to operate the state functions, as well as to perform the function of the actual government. In this context, the legal status of the Election Organizer Ethics Council in relation to the Election Organizer Agency to be important, because the presence of these institutions is born with the function to keep the General Election Organizer (election) in integrity General Election. To get the elections that have the dignity and the dignity are needed strengthen an institution that is truly independent and surveillance both enforcement and prevention, so was born an

institution named Election Organizer Ethics Council (DKPP) as a new institution in the practice of democratic and special constitutional as an institution of "behavior controlling" against the election organizers in Indonesia. The Election Organizer Ethics Council (DKPP) has the duty and authority to enforce and maintain independence, integrity, and the credibility of the election organizers. More specifically, the Election Organizer Ethics Council (DKPP) was formed to examine, hear and decide complaints/reports of alleged violations of the code of ethics by members of the General Elections Commission (KPU), member of the Elections Supervisory Board (Bawaslu), and under it. The new institutions include the Election Organizer Ethics Council (DKPP) can be called as state auxiliary organs, or auxiliary institutions as the state institutions that are supporting. Among these institutions there are also so-called self-regulatory agencies, independent supervisor bodies or institutions that perform the mix-function between functions of regulatory, administrative and punishment are usually separated but actually done simultaneously by the new institution. New institutions in this regard the Election Organizer Ethics Council (DKPP), the General Election Commission (KPU), the Elections Supervisory Board (Bawaslu) are all of them become holders of power against election organizer and has a portion in state power. The General Election Commission (KPU) gets a portion as organizers of election, the Elections Supervisory Board (Bawaslu) get a portion as supervisory and resolve election disputes, while the Election Organizer Ethics Council gets a portion to enforce a code of ethics of election organizer. Affirmation of the distribution of this authority portion is important to be known by the public. Given that any law country that are nomochratic must guarantee democracy, then in any democratic country should be guaranteed organizers of state power based on law. Any electoral system is used, efforts to form a strong government in both the method of implementation of direct democracy or through the mechanism of indirect democracy. Further, from the aspect of recruitment, the Election Organizer Ethics Council (DKPP) is more to find ethic judge. As the description of analysis result for normative study, the authors came to the conclusion that the legal status of the Election Organizer Ethics Council in the implementation of election is not an organizer of Election as contained in the Constitution of the Republic of Indonesia No 15 of 2011 on Election Organizer, but the supporting institution to the Election Organizer Institution that serves to uphold the ethics (rule of ethics). In institutional aspect, the institution of the Election Organizer Ethics Council if analyzed with the theory of legal entity, is not fulfilled as the Public Entity, because the institution of the Election Organizer Ethics Council do not own property and do not have own infrastructure. But the urgency of the Election Organizer Ethics Council in elections in Indonesia is to the essence of democratic elections.

4.2 Ideal Concept of Legal Status of the Election Organizer Ethics Council in Election in Indonesia

One characteristic of a democratic constitutional state is the change of leadership in an orderly manner through the mechanism of elections. Therefore, General Election must always be based on the principles of direct, general, free, confidential, honest and fair as a consequence of the realization of a democratic state. Democracy and democratization process is substantially not enough just to compliance with the formal attributes of democracy, such as

the existence of representative institutions, the presence of more than one political party competing in the elections, and the elections periodically. Democracy and democratization process must be based on the human rights standard to make it more meaningful participatory and emancipatory, because if not, democracy will easily co-opted and corrupted. In Indonesia, the most significant changes as a result of the amendment of the Constitution of 1945 is that procedure of positions in the legislature and executive, both at the national and local level, should be done by means of elections, and not appointment, or inheritance, assuming of course will be more democratic, in accordance with the principle of popular sovereignty. As stated in Article 1 paragraph (2) of the Constitution of 1945, that "Sovereignty belongs to the people and carried out in accordance with the constitution". All modern democracies carry out elections, but not all elections are democratic, because a democratic election is not just symbols, but a democratic election should be competitive, periodic, inclusive (large), and definitively determine the leadership of the government. The size that a democratic election or not, have to meet three conditions, namely (a) the presence or absence of recognition, protection and human rights development; (b) the establishment of public confidence in the election that produces a legitimate government, and (c) there is a fair competition of the participants. Term of election disputes often contained in the literature on electoral as well as in the product of legislation. However, a complete definition of election dispute has not fully conceptualized, both in literature reference as well as laws on electoral. As far as the author since the election in 1955 until 2009, the setting of electoral in this country have not been fully set up so that it is not uncommon election will eventually have problems, better known by the election dispute. The sense of dispute election is not conceptualized properly, and then the types of dispute election or any election cannot be categorized as good. So, generally the law enforcement against the disputed election not works optimally. In the perspective of election in an international scale, election experts do not yet have a clear definition of election disputes. International Foundation for Electoral Systems (IFES) in his guide discusses the election dispute as follows:

Dispute in the resolution of the election dispute can also be interpreted as a refutation of the election results, when the official election results were disputed. It becomes a significant challenge for any election dispute resolution system. Often, the superior courts (Supreme Court, Constitutional Court or other special election court) is a forum to resolve such claims, although in some countries, an administrative body that is separate from the court designated to perform the task. In some other countries, directly submit a claim or lawsuit against the election results is not permitted, where the entire lawsuit and objections to the election is handled by the ordinary criminal justice system. Other election disputes tend to be often less important, such as determining which political parties are allowed to campaign on a particular day or a particular location according to election rules. Less serious disputes can be decided by the election commission at the local level.

Setting and experience in handling of the election dispute can also be seen from the practice in other countries, especially in Asia. In 2010, the Constitutional Court of Indonesia to host the Seventh Conference of Judges of the Constitutional Court in Asia. In the conference also appear to share about the practice of Asian countries in regulating election disputes and its resolution. There are two important things to note as a result of conferences related to the election dispute: First, the coverage of election dispute definition. Second, related to the institution those decide election disputes. Thus, the conception depicted in this conference seems to have not been able to separate clearly between conception of violations and election dispute. When the election in 2014, then formulated a concrete definition of Election Dispute and its type as stated in Act No. 8 of 2012 on the Election of the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional House of Representatives (DPRD). In article 257 that the election dispute is a dispute between participants of elections and election participants with election organizers as a result of the issuance of the General Election Commission's decision. The presence of arrangement about election disputes and disputes pater as well as the resolution mechanism contained in the Election Act to be own progress in adding a study reference for election law enforcement in Indonesia. The next agenda is the implementation of that provision because some of the rules on dispute still causing multiple interpretations. For example, related to the position of people in the election dispute, it is related to the legal standing of the community in the event of a dispute in court. General Election Act is only restricting the subject of an election dispute that is organizers and election participants. But, in the constitutional development has born a new state institution as supporting institutions namely the Election Organizer Ethics Council (DKPP) which has own function. To clarify the form of sanctions provided by the Election Organizer Ethics Council (DKPP) against the election organizers which proved to have violated the code of ethic, then the General Election Act provides three categories of verdict the Election Organizer Ethics Council (DKPP), namely a written warning, temporary termination, or permanent termination. It means that the act gives the limitations of 3 (three) types of verdict the Election Organizer Ethics Council (DKPP), beyond the three sanctions is no longer the authority of the Election Organizer Ethics Council (DKPP). In the aspect of law enforcement, it is important to realize that the position and role of Election Supervisor Agency according to the provisions of the new act, Act No. 15 of 2011 on the Election Organizer, experienced a significant difference to the position and role of the Election Supervisory Agency prior to Act 22 of 2007. Now, the Election Supervisory Agency is known as quasi-judicial institution, namely in the field of election organizing administration. Similarly, DKPP is also a semi-judicial or quasi-judicial, particularly in the field of election organizers ethics. Case object (objectum litis) are handled by DKPP is limited only to the issue of personal behavior or officer or personnel of the general elections. Objects of ethical violations that can be sued is similar to the qualification of criminal act in the criminal justice system, both the attitudes and actions that contain evil and unlawful elements by individuals singly or together are accountable as well as individual per person. Normatively, the decision of DKPP is not related to the stages of general election process. Therefore, objectum litis of case in DKPP is only relates to the personal issues of General Election

Organizer, and then by itself the decision of DKPP did not contain a legal consequence of the process or the stages of the election. Case objects in DKPP is also does not depend on "tempus delicti" or time of an action to violate code of ethics. In other words, can be accused of violating the code of ethics is an individual, either individually or jointly, rather than as an institution, but as individuals. The task of DKPP under the regulation of the Election Organizer Ethics Council No. 2 of 2012 as amended by the Election Organizer Ethics Council No. 1 of 2013 on procedure for codes of conduct session of general election organizer:

1. Receiving complaints/reports of alleged violations of the code of ethic by the Election Organizer
2. Conducting investigation, verification and investigation of complaints/reports of alleged violations of the code of ethics by the Election Organizer.
3. Establish decision or verdict; and;
4. Delivering the verdict to the parties concerned to follow up.

Meanwhile, in order to do its duties, DKPP has the authority to:

1. Call the election organizers are suspected of violating the code of ethics to provide an explanation and defense;
2. Call the complainant, witnesses, and/or other parties related to questioning, including documents or other evidence; and
3. Provide sanctions to the election organizers were proven to have violated the code of ethics.

When viewed from the legal aspects related to the duties and functions of DKPP, it is clear the role and legal norms that underlie DKPP authority. Therefore, leave from the legal construction of DKPP, the authors consider that the form of the final decision and binding of DKPP, it means no longer available other remedy which further after the entry into force of the decision of DKPP, while the meaning of binding is the decision bind directly and forced so that all institution as state administration organizer and including judiciary bodies and obliged to implement the decision of DKPP properly. The implementation or execution of DKPP verdict it must be followed up by the General Election Commission, the Election Supervisory Agency, or by the government and related-institutions. Related to the verdict of DKPP, among other state institutions themselves are still occur dissent or disagree about the final and binding decision of DKPP. Even DKPP verdict is ignored by the relevant parties. For comparison, the decision of the Constitutional Court are also final and binding, because the state institutions as the guardian of the constitution, but the authors argue that in the Republic of Indonesia still needed also other powerful institutions specialized in maintaining and guarding the establishment of democracy, such as the decision of DKPP. For that, the supporting institution both Auxiliary organ and Supporting organs must also be strong. In addition, cases of alleged violations of the code of ethics that can directly submitted and handled by DKPP is only restricting to cases of alleged violations by the election organizers at provincial or national levels. As for cases of alleged violations at district/city levels must be clarified first and handled by the General Election Commission or the Election Supervisory Agency at central level. If any related-reports or complaints are submitted directly to DKPP, the report or the complaint will

be examined and resolved in advance by the General Election Commission or the Election Supervisory Agency which also served as a member of the Election Organizer Ethics Council (DKPP). Ideally, DKPP in doing its functions, shall remain in accordance with the concept of constitutional state in which its implementation based on the mandate of the constitution, independent judiciary, respect for human rights, and on the principle that the actions and policies should be based on the provisions of the law (due process of law), so that the constitutional rights of those seeking justice can still be realized.

4 CONCLUSION

The legal status of the Election Organizer Ethics Council Election in the organizing of elections in Indonesia serves to uphold ethics (rule of ethics). The authority of the Election Organizer Ethics Council in election in Indonesia sometimes out of authority. Ideal concept of legal status of the Election Organizer Ethics Council in elections is as supporting organ, which has the infrastructure and the secretary-general and administrative staff, so it has a public legal entity as the election organizer agencies serve as code of ethic enforcer and can be equated to other state institutions. In the aspect of recruitment, a leader of DKPP should no longer come from the General Election Commission or the Election Supervisory Agency, but from academics that have the ability based on scientific discipline and integrity actor.

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