

# **The Relationship between DKPP and PTUN Decisions regarding Ethical Violation by General Election Administrators**

## **Relasi Putusan DKPP dan PTUN dalam Pelanggaran Kode Etik Penyelenggara Pemilu**

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### **Abstrak**

Pemberhentian komisioner penyelenggara Pemilu melalui putusan Dewan Kehormatan Penyelenggara Pemilu (DKPP) tidak bersifat final dan mengikat pada tataran eksekutorialnya mengingat putusan tersebut dapat dibatalkan oleh Pengadilan Tata Usaha Negara. Penelitian ini bertujuan untuk menguraikan kewenangan DKPP dan PTUN dalam penyelesaian pelanggaran etik yang dilakukan oleh penyelenggara Pemilu sekaligus mengurai implikasi dan relasi putusan dari kedua lembaga tersebut. Bersamaan dengan itu, penelitian ini juga menawarkan konsep ideal tentang desain penyelesaian pelanggaran etik penyelenggara Pemilu di masa mendatang. Penelitian ini dilakukan dengan menggunakan jenis penelitian yuridis normatif. Hasil penelitian menunjukkan bahwa DKPP dan PTUN memiliki kewenangan yang saling beririsan namun dengan putusan yang berbeda. DKPP murni mengadili persoalan etik dan PTUN mengadili Keputusan Presiden yang merupakan tindak lanjut dari putusan DKPP. Dalam rangka untuk menghindari konflik putusan atas kasus yang beririsan maka atas pelanggaran kode etik dimasa mendatang harus diselesaikan dengan mekanisme penyelesaian oleh lembaga yudikatif.

**Kata Kunci:** Penyelenggara Pemilu; Pelanggaran Kode Etik; Putusan.

### ***Abstract***

The commissioner of the general election administration was discharged through the decision of the General Election Administrator Honorary Council (DKPP). The decision is not final and binding at the executive branch, considering that the decision can be cancelled by the Administrative Court. This study aims to define the authority of DKPP and PTUN in resolving ethical violations committed by election administrators and parse the implications and relationships of the decisions of the two institutions. This paper also proposes an ideal concept for the design of solving ethical violations of election administrators in the future. This study uses normative juridical methods. The results showed that the DKPP and PTUN have overlapping authority but with different decisions. DKPP purely adjudicates ethical issues, and the Administrative Court adjudicates the Presidential Decree, which is a follow-up to the DKPP decision. To avoid conflicting decisions on cases that intersect, violations of the code of ethics in the future must be resolved with a settlement mechanism by the judiciary.

**Keywords:** General Election Administrator; Violation of Code of Ethics; Decision.

## **A. INTRODUCTION**

### **1. Backgrounds**

General election administrators hold a significant position in both national and local elections. Election administrators are responsible for general election administration in the interest of the sovereignty of the people involved in direct, public, independent, confidential, honest, and fair elections. Incompetence and irresponsibility of election administrators could mishandle leadership transition, leaving this transition to no avail. Similarly, general election administration potentially helps gain benefits from the authority. General election administrators will attract more attention from candidate pairs in every event of the election since they need the services or role of the commissioners responsible for administering the election to gain benefits in unfair ways.

From these authorities of authority and responsibilities attached to the commissioners of election administrators, the commissioners, especially the members of the Election Commission (KPU). The commissioners are supervised in terms of their ethics and laws to ensure that their integrity and independence are maintained. Violations of ethics and Law committed by the commissioners can definitely lead to serious sanctions.<sup>1</sup>

<sup>1</sup> Puspitasari, Dyan. "Peran Dewan Kehormatan Penyelenggara Pemilu dalam Menjaga Kemandirian dan Integritas Penyelenggara Pemilihan Umum di Indonesia." *Lentera Hukum* 5 (2018): 384 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/lenth5&div=30&id=&page=>

The sanctions for the commissioners of the KPU case are the latest breakthroughs in the system aiming to enforce the integrity of the general election administrators in Indonesia. So far, it has been the norm that state administrators are under supervision and subject to sanctions when they are found to violate the Law, while ethics-related matters have been off the radar. The supervision over the attitude of a state administrator, including those as general election administrators, departs from the awareness, implying that violations of ethics committed by state administrators and general election administrators lead to violations of the Law.

Arguments over ethical violations that may end up as violations of the Law can be inevitable. Corruptions arise from such violations of ethics. It could start with the condition where a person in charge of the election administration has a meeting with an official holding the highest position in a political party or a legislative candidate. This initial meeting may extend to a discussion intended to benefit the political party concerned or the legislative candidate. A meeting between the commissioner of KPU and an official of a political party is certainly deemed to violate the code of ethics, probably leading further to bribery for the sake of the political party and the legislative candidates concerned.

The establishment of a special organization intended to handle violations of ethics in general election administration also marks the determination to nurture ethics among general election administrators. Election Administrator Honorary Council (DKPP) was officially established to judge ethical violations committed by general election administrators<sup>2</sup> on 12 June 2012 under Law Number 15 of 2011 concerning General Election Administrators.<sup>3</sup>

Since its establishment, DKPP has delivered thousands of decisions over violations of ethics committed by KPU commissioners at central and regional levels. The decisions issued by DKPP involve a warning, temporary discharge, permanent discharge, and dishonourable discharge. The decisions of DKPP involving the dishonourable discharge of general election administrators are final and binding,<sup>4</sup> meaning that no appeal can be lodged by the commissioners of KPU following the decisions issued. Every commissioner that has been tried by DKPP will have to remain with the verdict delivered. One case that has become polemic following the Decision of DKPP Number

<sup>2</sup> Chakim, M. Lutfi. "Desain institusional dewan kehormatan penyelenggara pemilu (DKPP) sebagai peradilan etik." *Jurnal Konstitusi* 11, no. 2 (2016): 398.

<sup>3</sup> <https://dkpp.go.id/sejarah-dkpp/> retrieved on 19 June 2022 at 21:20 WIB

<sup>4</sup> Nasef, M. Imam. "Studi Kritis Mengenai Kewenangan Dewan Kehormatan Penyelenggara Pemilu dalam Mengawal Electoral Integrity di Indonesia." *Jurnal Hukum Ius Quia Iustum* 21, no. 3 (2014): 395. <https://doi.org/10.20885/iustum.vol21.iss3.art3>

317-PKE-DKPP/X/2019, whose one of the indictments states “imposing a sanction of permanent discharge on the reported VII Evi Novida Ginting Manik as the member of KPU of the Republic of Indonesia in the time this decision is declared”.<sup>5</sup>

Following this DKPP decision, the President issued Presidential Decree Number 34/P of 2020 concerning the dismissal of Evi Novida Ginting from her position as a commissioner of KPU. The Presidential Decree was contested by Evi Novida Ginting to an Administrative Court (PTUN). After a lengthy trial process, PTUN granted her request by revoking the Presidential Decree. This revocation by the PTUN following the dismissal of the commissioner from her position indicates that the dismissal of Evi Novida Ginting from her position has been invalid.

The Decision of PTUN has led to a quandary. On the one hand, the President had to respect the decision issued by PTUN by putting Evi Novida Ginting back in her position as a commissioner at KPU. On the other hand, the President had to respect the decision of DKPP, which was final and binding since no legal remedies could be taken following the issuance of the decision.

## 2. Research Questions

This research focuses on the authority and the connection between the decision of DKPP and the decision of PTUN to set resolutions to the violations of general election ethics.

## 3. Methods

This research employed normative-juridical methods and conceptual, statutory, and case approaches. The primary legal data were taken from legislation and PTUN and DKPP decisions regarding the resolutions of the violations of the code of ethics in general elections. The secondary data were from previous studies, journals, and books to support the primary ones. Data collection was performed by inventorying and clarifying the legal data according to their sub-problems analyzed, and all data were analyzed based on descriptive-analysis techniques.

## B. DISCUSSION

### 1. The authority of the General Election Administrator Honorary Council (DKPP)

The DKPP is a part of general election administrators; this institution is responsible for establishing electoral justice in ethical issues of KPU and the General Election Supervisory Body (Bawaslu) officer.<sup>6</sup>

<sup>5</sup> Putusan DKPP Nomor 317-PKE-DKPP/X/2019, 36

<sup>6</sup> [https://id.wikipedia.org/wiki/Dewan\\_Kehormatan\\_Penyelenggara\\_Pemilihan\\_Umum](https://id.wikipedia.org/wiki/Dewan_Kehormatan_Penyelenggara_Pemilihan_Umum) retrieved on 18 June 2022 at 09:20 WIB

Objectum litis, or the object that can be tried by the DKPP, is restricted to ethical violations, as mentioned earlier, not criminal violations, meaning that ethical violations are not always criminal violations. However, criminal offences can be seen as ethical violations.<sup>7</sup> The violations of ethics, in this case, are more linked to the attitude of a commissioner of the KPU to other parties within the internal or external scopes. The external violations may involve the interaction between a commissioner and another party in a general election, such as a political party, a legislative candidate, and a regional head candidate.

Commissioners of KPU are prohibited from interacting with other groups (candidates and team) related to the neutrality of their duties. Those interactions (with ethical issues and conflict of interest) are prohibited in every situation. General election administrators should maintain interactions that could lead to the intervention of the general election administration process.

The interaction of KPU and Bawaslu with candidates is legally permitted in the registration process and meeting with some conditions. Framing ethical cases are not easy; its principal basis is an abstract issue with no rigid and detailed rules. Moreover, human attitudes that can be categorized as ethical tendencies are extensive.

This extensive scope often leads to subjective consideration given by the panel of judges of the DKPP in the trial dealing with ethical code issues. During the trial process, the judges mostly refer to extensive interpretations in deciding a case, and these interpretations could extend the definition of a provision in legislation.<sup>8</sup>

The DKPP decision is final and binding, which means no further legal remedy. The decision with no appeal process is an ethical violation of the election justice process.

However, some problematic issues arose following the trial handled by the DKPP. First, upon the decision regarding the ethical violation committed by the commissioner, DKPP dismissed the person concerned from her position. The decision is deemed unreasonable and unacceptable within the scope of current legal systems in Indonesia, contrary to the fact that a commissioner of KPU is appointed under the mechanism of the Law. That is, the dismissal should also involve legal mechanisms or legal systems. The involvement of legal systems indicates that law enforcement will have binding power when this case is tried by state judicial bodies such as the Supreme Court and Constitutional Court.

<sup>7</sup> Asshiddiqie, Jimly. *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), XIV.

<sup>8</sup> Monteiro, Josef M. "Teori penemuan hukum dalam pengujian undang-undang dan peraturan pemerintah pengganti undang-undang." *Jurnal Hukum PRIORIS* 6, no. 3 (2018): 271

On the contrary, DKPP is not a judicial body, and, thus, the decisions of the DKPP cannot cover the territory of laws. Within the purview of the state of Law, ethical issues and laws represent two different scopes, and they cannot blend despite their connection. The standards of ethics are not applicable in the legal systems in Indonesia that refer to Continental Europe, indicating that court decisions always follow current or written laws (*ius contituendum*).

Second, the decision delivered by the DKPP followed by the dismissal of a commissioner due to the ethical violation committed contravenes the doctrine that a person is innocent until they have been proven guilty (A presumption of innocence).<sup>9</sup> The sanction following the decision declared by the DKPP was not at all based on a court decision issued by a judicial body, contravening the provision in Article 1 Paragraph 3 of the 1945 Constitution stating “the State of Indonesia is a state based on the rule of law”, meaning that legal issues go beyond ethics-related matters.

Third, DKPP is not categorized as a court, and this position indicates that DKPP is not authorized to dismiss a person from his/her position as a commissioner of KPU. The decision of DKPP was only restricted to ethical decisions, and it did not hold the power to dismiss the commissioner. Ethical decisions give recommendations to be brought further to a court to be later decided whether a defendant should be dismissed from his/her position. This unacceptable authority can be further compared to the position of judicial commission as the highest state body authorized to enforce the dignity of judges.<sup>10</sup> With such an authority, the Judicial Commission has the right to supervise the performance of judges in Indonesia. Following any reports indicating that a judge violates the code of ethics, the Judicial Commission initiates a trial to decide whether the judge is proven guilty of an ethical violation. Only if proven guilty will this case go further to an internal trial held by the Supreme Court that is authorized to dismiss a person from his/her position.

On the other hand, the decisions of DKPP are dependent on the way that these decisions cannot be executed without approval from the President. In the case of Evi Novida Ginting, the decision of DKPP was contingent on the approval of the President in terms of whether the President Implemented the decision or not. Are this decision

<sup>9</sup> Remaja, I. Nyoman Gede. “Penerapan Asas Praduga Tak Bersalah Bagian dari Perlindungan Hak Asasi Manusia yang Harus Dijamin oleh Negara.” *Kertha Widya* 6, no. 1 (2018): 10. <https://ejournal2.unipas.ac.id/index.php/KW/article/view/491>

<sup>10</sup> BERTIN, BERTIN. “Fungsi Pengawasan Komisi Yudisial terhadap Perilaku Hakim Dihubungkan dengan Independensi Hakim sebagai Pelaku Kekuasaan Kehakiman.” PhD diss., Tadulako University, (2013): 1. <https://www.neliti.com/publications/152071/fungsi-pengawasan-komisi-yudisial-terhadap-perilaku-hakim-dihubungkan-dengan-ind>

binding the President to fully conform? There is no certain reasoning for the President to arrange to be dismissed from his/her position only by the decision made by the DKPP unless the President is concerned about the dismissal of a commissioner from KPU. With this dependency, the President was faced with two options: approving the decision of the DKPP and issuing the Presidential Decree concerning the dismissal or rejecting the decision without any presidential decree to be issued.

Both options are not easy for the President to decide. On the one hand, refusing to issue the decree can also mean disrespect for the decision issued by the DKPP as a state organization. On the other hand, the decision to issue a Presidential Decree may be taken as an administrative measure taken by the Head of the state. It means that this decree may be taken as something not more than just a formality to legitimate the decision issued by the DKPP.

To some extent, if the President has not intended to conform to the decision, then the decision does not represent a final decision. The President's decree issued may also be considered another violation of the Law committed by the President. This will be contrary to the norm where the President, as the Head of the state administration, must act according to the Law. This is also congruent with the legality principle in the State Administrative Law, mentioning *het vermoede van rechtmateheid bestuur*.<sup>11</sup> Maybe those choice is the safest way that President can consider because there are no legal consequences which entail.

## 2. The Authority of State Administrative Court (PTUN)

The Administrative Court (PTUN) is within the Supreme Court. As a judicial body, PTUN functions to enforce the Law and justice; PTUN, within the purview of state administration, is authorized to deal with state administrative disputes defined:

*“State administrative disputes arise from the domain of state administration between a person or a private legal entity and a state administrative body or official, either at central government or regional level as a consequence of the issuance of the Decision of State Administration regarding employment disputes according to the current legislation”.*<sup>12</sup>

According to Article 1 point 10 of Act Number 51 of 2009, the aspects of State Administrative Disputes involve the following:

- a) A dispute or conflict arising in the domain of state administration (government administration)

<sup>11</sup> S.F. Marbun. *Hukum Administrasi Negara*, Yogyakarta: FH UII Press, 2012, 104

<sup>12</sup> Pasal 1 angka 10 Undang-Undang Nomor 51 Tahun 2009 tentang Peradilan Tata Usaha Negara

- b) The subject of dispute between officers or institutions of state administration and a person or a private legal entity
- c) A dispute or a *conflict following the decision issued by a state administrative decision*

The above aspects indicate that arising state administrative disputes are mainly the consequences of State Administrative decisions. In terms of quality, the state administrative decisions represent the causes, while state administrative disputes represent the effects. In terms of a contrario, administrative court disputes arise when no state administrative decision is issued by a state administrative body/official. Thus, an administrative court decision is an *objectum litis* of a state administrative dispute. Article 1 point 9 of Law Number 51 of 2009 defines a State Administrative Decision as a written decision issued by a State Administrative Body or official outlining the concrete, individual, and final legal actions of the State Administration in accordance with the Law, which have legal consequences for a person or private legal entity.

Departing from the provision in Article 1 point 9 mentioned above, all the decisions issued by the State Administration can serve as the objects of state administrative disputes. However, several decisions of State Administration are not included as the objects of PTUN, as set forth in Article 2 letter g of act Number 5 of 1986 concerning Administrative Court.

The exclusion of the state administrative decision regarding general election administration is clearly set forth in point g, implying that only the decisions regarding election results or voting results cannot be tried. In other words, all decisions regarding state administrative decisions in general elections (other than the decisions revealing voting results) can still be tried by the administrative court (PTUN). PTUN has the authority to try the dispute of state administration in a regional head election. The disputes of election state administration represent the disputes between a candidate for Governor and vice, Municipal and vice, for regional election commission (KPUD).<sup>13</sup>

The administrative court has a scope of authority to disputes regarding election administration based on:

- a) The participant of the election had an objection to Bawaslu regarding the decision of the regional election commission (KPUD) in three working days.
- b) The participation can file the objection to the High Administrative Court (PT TUN) over the dispute of election state administration if only administrative measures or efforts in provincial Bawaslu and General

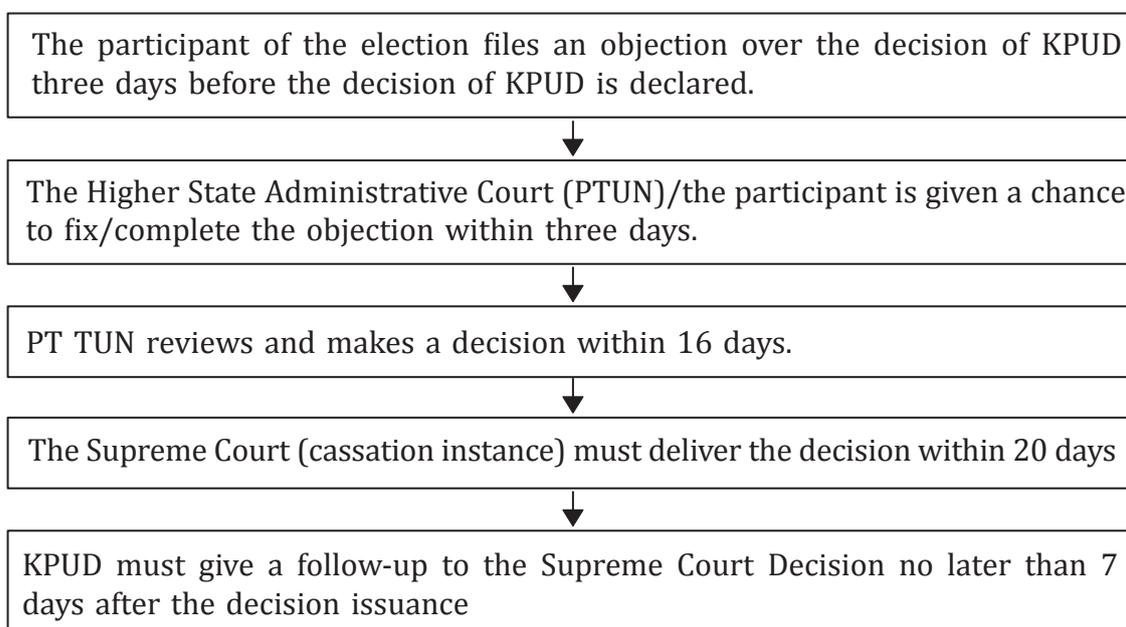
<sup>13</sup> Article 153 point 1 of Law Number 10 of 2016 concerning Regional Head Election

Election Supervisory Committee (Panwaslu) of the Regency/municipality are completed

- c) If the object over the disputed matter is that the administration of the election is incomplete, PT TUN gives another three working days to fix the objection. If within three days the objection is not fixed, the judges could deliver a decision declaring that the objection is rejected, and no further legal remedies can be taken.
- d) High Administrative Court (PT TUN) is given fifteen days to review and decide.
- e) Following the decision of the PT TUN over the dispute concerned, cassation can be considered by submitting it to the Supreme Court within five days after the decision of PT TUN is read. The Supreme Court is responsible for delivering a decision following the request of cassation for twenty working days. The decision made by the Supreme Court regarding the dispute of election state administration is final, and no extraordinary legal remedies or judicial review can be taken.
- f) The election administration in the Regency/Municipality must give a follow-up to the Decision of PT TUN or Supreme Court no later than seven working days. However, the obligation to give the follow-up can be done only if the decision is issued at least 30 days since the voting is held.<sup>14</sup>

### Diagram 1

#### Resolution to the Dispute of Election State Administration

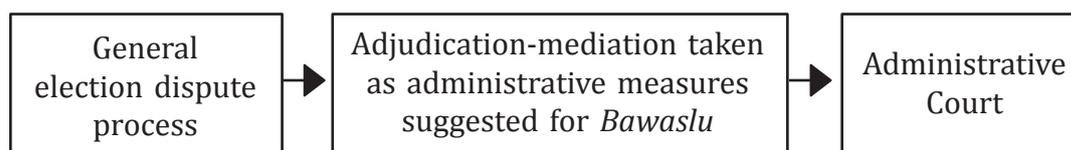


<sup>14</sup> Article 154 of Law Number 10 of 2016 concerning Regional Head Election

The authority of the Administrative Court (PTUN) regarding general elections not only takes place in the dispute of state administration in regional head elections, but it is also obvious in national general elections. The following diagram shows the flow of a dispute resolution process:

**Diagram 2**

The flow of a Dispute Resolution Process



The above diagram indicates that PTUN has the authority for all state administrative decisions over state administrative disputes arising in regional head elections and national general elections. This authority is only related to public disputes, considering that state administrative decisions regulatory products made by legal authority and give legal consequences. Therefore, PTUN does not hold any authority to judge disputes outside the area of state administrative disputes in either national general elections or regional head elections, including any violations of ethics committed by general election administrators.

Ethical violations are different from violations of laws. Similarly, decisions over ethical violations are not categorized as beshiking or state administrative decisions or regulatory products from executives because the decisions regarding ethical violations are issued by DKPP, which is not an executive body nor an official representing state administration. The position of the DKPP is outlined in consideration of constitutional judges in Constitutional Court Decision Number 32/PUU-XIX/2021, page 145, stating, “The Decisions issued by DKPP are final and binding as intended in Article 112 Paragraph (12) of Law 15/2011”. The phrase final and binding create uncertainty regarding whether the weight of this phrase in the Law mentioned is equal to that referred to by the judicial body. That is, it is essential that the court assert that this ‘final and binding’ as in the decisions of the DKPP is not comparable to that in a judicial body in general since DKPP is an internal instrument in general election administration with its authority given by the Law. The “final and binding” given in the decisions of DKPP must be understood as “final and binding” for the President, KPU, Provincial KPU, KPU at Regency/municipality, or.....”.

The consideration of the constitutional judges above can be interpreted as: first, the sentence that reads: “is similar to final and binding as in the decisions issued

by a judiciary body” asserts that DKPP is not an executive body but a judicial body, considering that the Supreme Court compares the status of the decisions issued by DKPP to those of a judicial body. If the Supreme Court intends to state that DKPP is an executive body as intended on page 146, the Constitutional Court cannot declare that the decisions of DKPP are not comparable to those issued by a judicial body. This similarity is highlighted in terms of the functionality of DKPP that holds judicative power, not the executive one, despite the fact that DKPP decisions are not fully or precisely comparable to the decisions issued by judicial bodies in general.

Second, the term “DKPP decisions” by constitutional judges indicates that grammatically the Constitutional Court agrees that DKPP has the role in either judicative or executive power. When the Constitutional Court intends to state that DKPP is an executive body, the word “putusan” in Bahasa as “verdict” or “decision” in English is not used, but “keputusan” should be more relevant, as in “decree” in English. “Putusan” is deemed to be a legislative product of a judicial body, while “keputusan” is linked to an executive body, and the word “keputusan” is relevant to “beshiking”.

A similar approach to reconstructing the idea that DKPP is not an executive body refers to the provision in law Number 30 of 2014 concerning Government Administration in Articles 1, Point 7 and 8.

- a. Article 1 Point 7 states the decision of government administration is also referred to as State Administrative Decision, Decision, the decree by a government body and/or official in the government administration. The statement above indicates that DKPP is not an executive body, considering that DKPP no longer has the function of administering the government. DKPP is to judge in the cases of ethical violations committed by general election administrators (KPU commissioners);
- b. Article 1 Point 8 states the Measure taken by the Government Administration, an act of a Government Official or another state administrator to take or not take any concrete action in the state governance. The decision of DKPP to conduct a trial over the allegation of a violation committed by the commissioner of KPU asserts that it is not an act of the government administration, recalling that the concrete act of the government can only be done by an executive body with “keputusan” or a decree, not “putusan” or a verdict.

### **3. The Relations between DKPP and PTUN in terms of Ethical Violations committed by General Election Administrators**

Election Administrator Honorary Council (DKPP) is a state body responsible for the administration of the elections. The position of DKPP in the structure of the state administration in Indonesia does not lie within the legislative, executive, or judicative

purviews.<sup>15</sup> DKPP is independent and intended to only deal with general election administration. PTUN, on the other hand, is a higher state body with its position in a judicative purview or the body that is responsible for judicial power. The administrative court is within the scope of the Supreme Court, along with a religious court, district court, and a court martial. As a judicial body, PTUN is authorized to investigate, judge, and deliver a verdict over all cases of disputes in state administration.

The details above indicate that the Administrative court (PTUN) and DKPP do not have any connection, and neither make the decisions given by these two bodies. That is, the DKPP decision over the ethical violations committed by a commissioner of KPU or general election administrator is understood as a verdict, and it cannot serve as an object of the PTUN, considering that the objectum litis of the PTUN is beshiking, not a verdict.

The theoretical or normative frameworks face many slippery slopes, such as in the case of Evi Novida Ginting. In this case, DKPP declared that Evi Novida Ginting was proven to have violated ethics as a general election administrator, and, following this decision, Evi Novida Ginting was dismissed from her position as a commissioner of KPU. On the other hand, PTUN issued a decision regarding the revocation of the Presidential Decree outlining the dismissal of Evi Novida Ginting from KPU.

From the case of Evi Novida Ginting there are theories used to analyze these two dissenting decisions. The first authority theory has focused on the authority of the state administration to act within the purview of public Law according to the Law in place.<sup>16</sup> This theory indicates that the trial held by the DKPP over the case of Evi Novida Ginting is congruent with the theory of authority because DKPP has gained attributive authority according to Election Administration Law, Elections Law, and Regional Election Law. DKPP is given the authority to judge the cases of ethical violations committed by general election administrators, as in the case faced by Evi Novida Ginting, the commissioner of KPU. From the perspective of the authority theory, it can be concluded that the decision delivered by DKPP holds permanent legal force that Evi had to abide by in a way that she had to take the consequence of being dismissed from her position as the commissioner of KPU. The President that appointed Evi Novida Ginting as a commissioner of KPU also holds the authority to respond to this decision by issuing a decree regarding this dismissal.

<sup>15</sup> Yulistyowati, Efi, Endah Pujiastuti, and Tri Mulyani. "Penerapan Konsep Trias Politica Dalam Sistem Pemerintahan Republik Indonesia: Studi Komparatif Atas Undang-Undang Dasar Tahun 1945 Sebelum Dan Sesudah Amandemen." *Jurnal Dinamika Sosial Budaya* 18, no. 2 (2017): 330.

<sup>16</sup> HR. Ridwan. *Hukum Administrasi Negara*, Jakarta : PT. Rajagrafindo, 2008, 102.

Although both the DKPP and the President have taken this legal action (dismissing Evi from her official position) in line with the authority, it does not always mean that both the decision of the DKPP and the Presidential Decree will not spark any further problems. Following the issuance of the presidential decree, Evi could file an objection over the dispute of state administration to PTUN on the pretext of the disadvantage she has to take due to the decree issued. Everyone, like Evi, has his/her right to file an objection of dispute once he/she feels disadvantaged by the Presidential Decree.

The PTUN has the authority to judge the objection filed by Evi Novida Ginting, considering that this was the dispute that was brought further to the PTUN, not the ethical violation she committed. It is obvious that ethical violations and objects of administration court are different objects. Ethical violations have been committed by Evi Novida Ginting decided by DKPP, then PTUN declared the president decree that dismissed Evi Novida Ginting null and void. It represents the decision of an official of State Administration that is final, individual, posing legal consequences, and concrete.

In other words, these two bodies (DKPP-PTUN) formally try the cases according to their competence, and it cannot be said that both try the same cases or that the conflict of authorities or the dispute of authorities takes place between the two, but it is somewhat related to the material implication of the execution of the authority of DKPP and PTUN regarding the case of Evi as the commissioner of KPU. According to the decision delivered by DKPP, Evi Novida Ginting had to be dismissed from her official position, and she no longer has her right to this position. However, in terms of the decision given by PTUN revoking the Presidential Decree over the dismissal, Evi could not be dismissed from her position, and she could remain in her position.

Regarding the opposing decisions of DKPP and PTUN, the President responsible for the issuance of the decree to appoint or dismiss a person from the position as a commissioner of KPU has to face this quandary; the President could remain silent regarding the case tried by the DKPP so that Evi still had to leave her official position, or the President has to issue a new Presidential decree regarding the reappointment of Evi back to the position as a commissioner of KPU if the President refers to the decision delivered by PTUN. In terms of the process or time approach, the President has given the follow-up in response to the DKPP decision regarding this dismissal, and the President performs the task as the Head of the state administration by abiding by the dismissal of the commissioner of KPU according to the decision of DKPP, and, thus, the issuance of the Presidential Decree is compliant with the legislation and enables the DKPP decision to be effective or enforceable. On the other hand, in terms of the substance, if the Presidential Decree regarding the dismissal of the commissioner

is reviewed in PTUN and revoked, the President should also respond to the PTUN decision by reappointing Evi to her previous official position. In this case, the decision of DKPP is final, and binding, which is ineffective and cannot be enforced since the legitimation of the decision issued by DKPP through the Presidential Decree has been cancelled by the PTUN, followed by the Presidential Decree of the revocation of the dismissal of the commissioner of KPU.

The above two decisions indicate that they represent the absolute authority of the President to mediate the substantial relations of the authorities between the DKPP and PTUN over the case of ethical violations committed by commissioners of KPU. The President, in this case, is authorized to give a follow-up to the PTUN decision to issue a Presidential Decree regarding the reappointment of Evi Novida Ginting as the commissioner of KPU. Although the decision issued by PTUN revoked the Presidential Decree regarding the dismissal and instructed the President to give a follow-up to the decision, the President still holds the authority to decide whether a new decree should be issued. On the other hand, the President can also give follow up on the decision of PTUN by being compliant with the decision of PTUN to reappoint Evi Novida Ginting to her position as a commissioner of KPU without heeding the decision of DKPP.

Second, the theory of effectiveness of Law refers to a matter that can be obeyed in the form of legislation or court decisions.<sup>17</sup> In the context of the DKPP decision over the dismissal discussed, this decision can be deemed to be effective if the DKPP decision is executable in a way that this decision is responded to by the President by issuing a decree and dismissing Evi Novida Ginting from her position as a commissioner of KPU, or the DKPP decision is deemed to be ineffective if the President does not give any follow-up, and the DKPP decision will not immediately dismiss Evi from her position, considering that Evi Novida Ginting was appointed under the Presidential Decree, and her dismissal should also be under this decree. This is in line with *contrarius actus* principle applicable in state administrative law, implying that an appointing body is also responsible for the dismissal.

The DKPP decision regarding the dismissal of a commissioner of KPU is given follow-up by the President by issuing a Presidential Decree Number 34/P of 2020 concerning Dishonorable Discharge of the Member of KPU Tenure Period 2017-2022. However, this decree was further contested in PTUN, and PTUN declared that this Presidential Decree had to be revoked or cancelled, and Evid Novida Ginting had to be reappointed as a commissioner of KPU. This new and contravening Presidential

<sup>17</sup> Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence), termasuk interpretasi Undang-undang (Legisprudence)*, Jakarta: Kencana Prenada Media Group, 2019, 273-274.

Decree indicates that, according to the theory of the effectiveness of the Law, the DKPP decision over the dismissal of Evi Novida Ginting could not be executed despite the final and binding quality of the DKPP decision. In other words, the Presidential Decree that responded to the Decision of PTUN and reappointed Evi Novida Ginting as a commissioner of KPU indicates that the DKPP decision over the dismissal of Evi from her position has not been effective, considering that the final and binding DKPP decision can be cancelled by PTUN through the judicial process following the issuance of the Presidential Decree as a follow-up of the decision of DKPP (the decree concerning the dismissal of Evi Novida Ginting/Presidential Decree Number 34/P of 2020 concerning Dishonorable Discharge of the Member of KPU Tenure Period 2017-2022). Therefore, despite the follow-up given by the President under the decree that dismissed Evi Novida Ginting from the position, this condition cannot be said effective for the DKPP decision because this dismissing decree is reviewed as an object or objection in TPUN, and the decision of PTUN instructed the President to revoke the Presidential Decree that dismissed Evi Novida Ginting although this decree was a follow-up for the DKPP decision that is legal and binding. That is, the DKPP decision cannot be substantially enforced since Evi Novida Ginting was held to remain in her official position despite the dismissal by DKPP. The follow-up given by the President to revoke the decree of the dismissal is deemed to be appropriate, considering that the Presidential Decree of the dismissal is an object of dispute in PTUN and, thus, the President is required to abide by the decision issued by a judicial body and the final and binding quality or the effectiveness of the DKPP decision regarding the dismissal can only apply to the process of DKPP decision up to the Presidential Decree regarding the dismissal of the commissioner of KPU (Evi Novida Ginting). The issuance of the Presidential Decree as a follow-up for the DKPP decision will just shift the process to another regime of Law, such as the regimes of state administrative law or the dispute of state administration. Hasyim Asy'ari argues that this is relevant to the Constitutional Court Decision Number 31/2013 on Page 71-72 (3.19), Paragraph 4, stating that sanctions imposed by DKPP refer to the violations of the code of ethics committed by general election administrators. The DKPP decision is final and binding for President, KPU, Provincial KPU, KPU in Regency/Municipality, or Bawaslu. The follow-up for the DKPP decision given by the President, Provincial KPU, KPU of the Regency/Municipality, or Bawaslu refers to the decision of state administration (TUN) that runs individual, concrete, and final government administration. Therefore, only the Presidential Decree, KPU, Provincial KPU, KPU of the Regency/Municipality, or

Bawaslu can be the objects of disputes or objections filed in PTUN. Regarding this case, the Constitutional Court Decision Number 32/PUU-XIX/2021 on page 146 states:

“Therefore, the decision of Administrative Court that holds permanent legal force must be obeyed, and this is the decision of judicial body with executorial power, or, in other words, this final and binding quality for the President, KPU, Provincial KPU, KPU of the Regency/Municipality, and Bawaslu can be understood as the condition where the President, KPU, Provincial KPU, KPU of the Regency/Municipality, and Bawaslu can only respond with the follow-up to the DKPP decision whose product is being reviewed as a disputed object in Administrative Court. Therefore, the President, KPU, Provincial KPU, KPU of the Regency/Municipality, and Bawaslu that hold the authority to appoint and dismiss an administrator of a general election are not authorized to hold different opinions contravening the DKPP Decision or the Administrative Court Decision that corrects or reinforces the DKPP Decision.”

Third, the theory of legal certainty<sup>18 19</sup> can be literally understood as a law that gives certainty to let people know what to do and to allow the government to run its responsibilities to execute judicial decisions. The settlement of the ethical violation as faced by Evi Novida Ginting, as elaborated earlier, has led to the disparity or polarization of the Decisions of DKPP and PTUN, leading to the absence of legal certainty. On the one hand, the decision of DKPP assertively declared that Evi Novida Ginting was dismissed from her position as a commissioner of KPU, meaning that the DKPP decision carries legal certainty according to the theory of legal certainty, given a follow-up from the President under the Presidential Decree Number 34/P of 2020 concerning Dishonorable Discharge of the Member of KPU Tenure Period 2017-2022.

On the other hand, PTUN granted Evi’s request of objection to Presidential Decree as a follow-up to the DKPP decision. PTUN decision also revoked the decree and requested that the President reappoint Evi Novida Ginting to her position.

In terms of legal certainty, the decisions of both DKPP and PTUN meet the legal aspect, although, in terms of substance, one decision contravenes the other.

This conflict of the two decisions has led to uncertainty in the execution portion, resulting in a quandary between the execution of the PTUN decision that holds permanent legal force (*incracht*) considering that the President did not lodge an appeal or cassation and the execution of DKPP decision that was final and binding.

<sup>18</sup> Fuller, Lon Luvois. “The morality of law.” New Haven And London: Yale University Press. (1969), 33 dan Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence), termasuk interpretasi Undang-undang (Legisprudence)*, Jakarta: Kencana Prenada Media Group, 2009, 337-338.

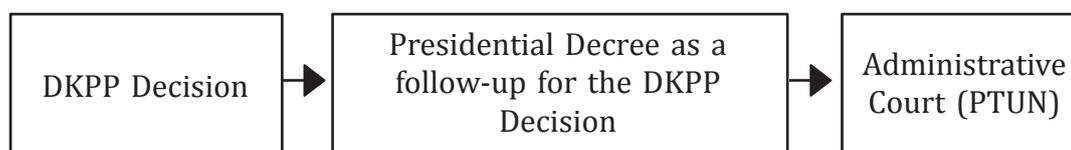
<sup>19</sup> (<https://ngobrolinhukum.wordpress.com/2013/02/05/memahami-kepastian-dalam-hukum/>) retrieved on 20 June 2022 at 10:30 WIB

In these two decisions, the President neglected the DKPP decision and issued the new Presidential Decree as a follow-up to the PTUN Decision to put Evi back to her previous official position as a commissioner of KPU. In such a case, the President seemed to adhere to the principle of *res judicata pro veritate habetur*.<sup>20</sup>

Fourth, a *trias politica* theory refers to power separation, introduced by Montesquie by dividing the State's Power Institution into three legislative, executive, and judicative bodies,<sup>21</sup> each of which holds its power and function. The legislative power (DPR, DPD, and MPR) has the authority to form a law, while the executive one holds the authority to execute laws, and the judicative body is to enforce the laws.<sup>22</sup> In the case of dismissing a commissioner of KPU from his/her position, the dispute settlement is within the purview of the judicative body, considering that this body functions to enforce the Law and prove whether a person violates the code of ethics or the legislation. Proving the allegation of a violation committed by an official can only take place under the mechanism of due process of Law. Such a process can be held by the Constitutional Court or a judicial body within the purview of the Supreme Court, including PTUN. However, recalling that the violation committed by Evi Novida Ginting was tried by DKPP, the settlement of the issue regarding ethical violations was a bit improper since DKPP is outside the area of the judicial body, and, thus, the court process in DKPP is not materially or substantially relevant to the theory of power division and separation or *trias politica*, recalling that DKPP executes its authority in the organization outside the judicative power. As a consequence, the DKPP decision, as linked to PTUN, had to be neglected.

### Diagram 3

The Relations of the process of Ethical Violation Settlement between DKPP and PTUN



In the time to come, the process of the ethical violation settlement must be integrated in a way that it must be held only by an institution to ensure that two decisions concerning matters that are substantially connected or have a casual

<sup>20</sup> Said, Umar. *Pengantar Hukum Indonesia*, Jakarta: Sinar Grafika, 2015, 74

<sup>21</sup> Efi Yulistyowati, "Penerapan Konsep Trias Politica Dalam Sistem..."

<sup>22</sup> Fatmawati. *Struktur dan fungsi legislasi parlemen dengan sistem multikameral: studi perbandingan antara Indonesia dan berbagai negara*. Penerbit Universitas Indonesia Press, 2010, 13

relationship do not repeat. This is expected to reduce a problem involving many state institutions.<sup>23</sup> The trial process over a violation of the code of ethics committed by a commissioner of KPU should be left to the responsibility of a judicative body simply because it is materially proper when this case is handled by the judicative body. Later reduce antinomy, which is a conflict between two elements, but they both need and complement each other<sup>24</sup>. The process running in the judicative body is executed by professional judges knowledgeable about procedural Law. In addition, decisions issued by a judicial body carry force before the Law; unlike in a non-judicial body, the trial is not executed by professional judges, and the decisions do not have the quality as verdicts Nor does it provide legal certainty and adequate protection.<sup>25</sup>

### C. CONCLUSION

The dispute settlement over the violation of ethics has new chapter issues, setting uncertainty and ineffectiveness of implementing the decision, a case by Evi Novida Ginting as a commissioner of KPU who dismissed from her official position. Following the review and trial of the Presidential Decree concerning the dismissal by PTUN, instructed the President to revoke the decree and reappoint Evi Novida Ginting to her previous position at KPU. The DKPP decision that is binding and final regarding the settlement of this ethical violation could not be further executed. Therefore, this settlement process should be executed by a judicative, and it has the quality to settle the issue.

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<sup>23</sup> Siboy, Ahmad. "Pilihan Desain Penyelesaian Sengketa Kewenangan Lembaga Negara." *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 1 (2022): 75-91.

<sup>24</sup> Endang, M. Ikbar Andi, Moh Fadli, Istislam Istislam, and Dewi Cahyandari. "Dialectics of the Urgency of Reforming The Law of State Administrative Justice as a Synthesis." *Jurnal Dinamika Hukum* 22, no. 1 (2022): 1-18.

<sup>25</sup> Op.Cit. Siboy, Ahmad.

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