

# THE CONCEPT OF LEGAL CERTAINTY IN THE FINAL AND BINDING DECISION OF THE ELECTION ORGANIZATION ETHICS COUNCIL (DKPP)

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**Abstract:** The final and binding phrase for the Election Organization Ethics Council's (DKPP) decision in the provisions of Article 458 paragraph (13) of the Election Law was submitted for judicial review through Constitutional Court Decision Number RI 32/PUU-XIX/2021. In the provisions of Article 458 paragraph (13), the phrase final and binding means that DKPP's decision cannot be appealed again. However, from the Evi Novida Eka Ginting case, DKPP's decision was subject to legal remedies through the State Administrative Court. This has implications for the legal certainty of the final and binding phrase in the provisions of Article 458 paragraph (13). This research raises the main problems studied which are, First, how is the final and binding decision of the Election Organizer Honorary Council reviewed from the Constitutional Court Decision Number 32 / PUU-XIX / 2021 and Law No. 7 of 2017 concerning Elections, Second, how is the final and binding decision of the Election Organizer Honorary Council reviewed from the aspect of legal certainty. The research method used was normative juridical. Based on the results of research and discussion, that First, in terms of the Constitutional Court's decision No. 32/PUU-XIX/2021 the phrase "final and binding" in Article 458 paragraph (13) can be an object in the State Administrative Court. The Constitutional Court emphasized that DKPP's position is not as a judicial institution, but as an institution equal to the General Election Commission (KPU) and the General Election Supervisory Agency (Bawaslu). What can be submitted is a legal effort, a lawsuit to the State Administrative Court to cancel the Presidential Decree. Reviewed according to Law No.7 of 2017 concerning General Elections, Article 458 paragraph (13), that the DKPP decision is final and binding, meaning that the decision cannot be made legal remedies again and can be implemented immediately. Second, according to the principle of legal certainty, the phrase final and binding causes legal uncertainty. Because the phrase final and binding for DKPP decisions means that DKPP decisions cannot be subject to legal remedies and must be implemented so that the final phrase in Article 458 paragraph (13) should be omitted to avoid causing multiple interpretations.

Keywords: Final; Binding; Election Organization Ethics Council; Certainty.

## I. INTRODUCTION

In the provisions of Article 1 paragraph (3) of the 1945 Indonesian Constitution which states that "The State of Indonesia is a State of Law". Thus, everything must be based on applicable law, including in terms of organizing general elections. As stipulated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "General elections shall be held directly, generally, freely, confidentially, honestly and fairly every five years (The 1945 Constitution of the Republic of Indonesia, n.d.). One of the characteristics of a democratic country is the implementation of free elections. Elections can be interpreted as a procedure for

resolving and delegating or handing over the power of people or parties who are given trust (Uu Nurul Huda, 2018, p. 7).

The Election Organization Ethics Council, which is then referred to as DKPP, has the duty and authority to uphold and maintain the independence, integrity, and credibility of election organizers. The regulations contained in Article 155 paragraph (2) of Law Number 7 Year 2017 regulate the content of the DKPP investigation object, which only reaches election organizers at the central to district/city levels.

"DKPP is formed to examine and decide complaints and/or reports of alleged violations of the code of ethics committed by members of the General Elections Commission (KPU), members of the provincial KPU, members of the Regency/City KPU, members of the General Elections Supervisory Agency (Bawaslu), members of the Provincial Bawaslu, and members of the Regency/City Bawaslu." (Law Number 7 of 2017 Concerning General Elections, n.d.)

DKPP in giving a decision after conducting research and/or verification on the accusation, listening to the defense and explanation of witnesses, and also giving consideration to other evidence. The decision as referred to in paragraph (10) is final and binding (Law Number 7 of 2017 Concerning General Elections, n.d.). DKPP's final and binding decision implies that DKPP's decision cannot be submitted to further legal remedies, and this is considered to provide a disadvantage and does not provide an opportunity to obtain justice for Election Organizers that receive punishment.

In 2013, DKPP's final and binding decision was subjected to judicial review in the Constitutional Court, which was still using the regulations contained in Law Number 15/2011 on General Election Organizers, through the Constitutional Court Decision Number 31/PUU-XI/2013 (Ida Budhiati, 2020, p. 49). The Constitutional Court Decision Number 31/PUU-XI/2013 raises the norm that the DKPP decision that has been decided by the Constitutional Court becomes decided by the State Administrative Court (Utang Rosidin dan A. Rusdiana, 2018, p. 25). The Constitutional Court Decision No. 31/PUU-XI/2013 does not provide changes to the phrase final and binding on DKPP decisions and in Law No. 7/2017 related to General Elections has provided accommodation to the Constitutional Court Decision No. 31/PUU-XI/2013, but there is some legal uncertainty regarding the final and binding nature of DKPP decisions related to the content of final and binding DKPP decisions that are more widespread in the provisions of Law No. 7/2017 related to General Elections after the Constitutional Court Decision No. 31/PUU-XI/2013. In addition, those who fight for justice can challenge the President's decision, KPU Decision, Provincial KPU Decision, Regency/City KPU Decision, and Bawaslu Decision to the State Administrative Court. In addition, the existence of Constitutional Court Decision Number 31/PUU-XI/2013 has the possibility of many lawsuits from justice seekers because the DKPP decision contains the phrase final and binding. In addition, there is also no mention in the provisions of Law Number 7/2017 related to Elections regarding legal remedies carried out as a result of the issuance of a Presidential Decree, KPU decision, Provincial KPU decision, Regency / City KPU decision, and Bawaslu decision as a follow-up action to the final and binding DKPP decision (Cristiya Putranti, 2019).

In 2021, the phrase final and binding on the DKPP's decision in the arrangement in Article 458 paragraph (13) of Law Number 7 of 2017 was submitted for judicial review through the Constitutional Court's decision Number RI 32/PUU-XIX/2021 which was considered unconstitutional, the Constitutional Court in its decision decided that:

"The provisions of Article 458 paragraph (13) of Law Number 7 Year 2017 (State Gazette of the Republic of Indonesia Year 2017 Number 182, Supplement to State Gazette of the Republic of Indonesia Number 6109) are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as they are not interpreted, "The decision as referred to in paragraph (10) is binding for the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu is a decision of a state administrative official which is concrete, individual and final, which can be the object of a lawsuit in the state administrative court".

Constitutional Court Decision Number 31/PUU-XI/2013 and Constitutional Court Decision Number RI 32/PUU-XIX/2021 as well as in the provisions of Article 458 paragraph (13) of Law Number 7 of 2017 indicate that the nature of the DKPP's decision is final and binding, causing a conflict of norms or overlapping norms which results in the emergence of legal uncertainty regarding the regulation of the articles governing the final and binding phrases. The phrase raises a conflict of norms which contains the interpretation of an overlapping norm in this case reinforced by the emergence of legal uncertainty where DKPP decisions can still be filed for a lawsuit.

That it should be specifically required to explain the phrase final and binding so as not to cause confusion on the phrase final and binding. The Constitutional Court Decision Number RI 32/PUU-XIX/2021 creates legal uncertainty where the DKPP Decision can still be appealed in the State Administrative Court. If it is appealed to the Supreme Court and canceled by the Supreme Court, then there is potentially no legal certainty.

DKPP through decision Number: 317-PKE-DKPP/X/2019 which is final and binding has dismissed Evi Novida Ginting Manik as a member of the Republic of Indonesia General Election Commission. Then, Evi Novida Ginting fought back by suing the Presidential Decree to the Jakarta State Administrative Court (PTUN). The verdict of the Jakarta State Administrative Court Number: 82/G/2020/PTUN.JKT "granted in its entirety" Evi's lawsuit. From the existence of the State Administrative Court's decision, it shows the unfinality of the DKPP's decision. From the description of the case, it can be seen that the meaning of the phrase final and binding on the DKPP's decision has a conflict of norms or overlaps, namely those contained in Article 458 Paragraph (13) of Law No. 7 of 2017 which reads "The decision as referred to in paragraph (10) is final and binding". From these provisions, that DKPP's decision cannot be made legal remedies anymore. However, from the Evi Novida Eka Ginting case, DKPP's decision was appealed through the State Administrative Court. Thus, it is still possible to challenge the DKPP's decision, even though the meaning of a "final and binding" decision should be a decision that cannot be appealed for retrial.

There have been studies that examine the final and binding decision of the Election Organization Ethics Council, including:

1. Zulkifli Aspan and Wiwin Suwandi (2022) conducted a study entitled "Final and Binding Analysis of the Decision of the Election Organization Ethics Council". The research results are that efforts are needed to inhibit political dynasty practices in Indonesia. Currently, the laws and regulations governing regional head elections have regulated the limitation of the term of office of regional heads in two periods, but there are no regulations governing the regulation to limit regional head candidates who come from relatives or families of incumbent regional heads. Therefore, regulations are needed that provide restrictions on the advancement of regional head candidates who are related to incumbent candidates. In addition, it is also necessary to reformulate the regeneration system by the party, where party members who are nominated as candidates for regional heads and deputy regional heads must have been party members for at least five years and have passed the regeneration stage. Also, there is a need for political education provided to the community to increase awareness of political participation.
2. Ade Sunarya (2021) conducted research with the title "The final and binding nature of the General Election Organization's Ethics Council's decision is connected to the theory of electoral justice". The results of the study are, the final and binding nature of the General Election Organization's Ethics Council Decision is stated in Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, the nature of the General Election Organization's Ethics Council Decision is only final and binding for the President, KPU, Provincial KPU, Regency / City KPU, Bawaslu, Provincial Bawaslu, and Regency / City Bawaslu in implementing the Decision of the Election Organization Ethics Council; and 2). The implementation of the final and binding nature after the issuance of the DKPP Decision cannot be directly executed by the Election Organization Ethics Council, but the decision must be followed up by the President, KPU, and Bawaslu. The decisions of the President, KPU, and Bawaslu as a follow-up to the DKPP Decision can be tested in the Administrative Court (State Administrative Court).
3. Mukhammad Slamet Rofi'i conducted research with the title "The Meaning of the Final and Binding Phrase Against the Decision Issued by the Election Organization Ethics Council (DKPP) as an Ethical Institution in the Implementation of General Elections". The result of the research is that what is interpreted in the provisions of article 458 paragraph (13) of Law Number 7 of 2017 related to General Elections reviews that the decision as referred to in the provisions of paragraph (10) has a final and binding nature. the meaning of final and binding has a difference with the final and binding decisions made by the judicial institutions. Because the Election Organization Ethics Council (DKPP) is not a judicial institution so that the DKPP decision must be interpreted as final and binding for the President, KPU, Provincial KPU, Regency / City KPU or Bawaslu to carry out the DKPP Decision. Furthermore, regarding how the process of implementing the DKPP decision after the DKPP was formed, a follow-up must be carried out by the relevant election organizers or the Government, so that the DKPP decision cannot be directly executed without the KPU and Bawaslu decisions.

The difference between the research raised by the author and the previous research in Table 1 is that the research raised by the author is a study of the final and binding decision of the Election Organization Ethics Council using the Constitutional Court Decision Number 32/PUU-XIX/2021. In this study, the authors want to examine from the aspect of legal certainty on the final and binding decision of the Honorary Council of the General Election Organizer. Based on the previous research above, there has been no research that examines the final and binding decision of the Election Organization Ethics Council using the Constitutional Court Decision Number 32/PUU-XIX/2021 in terms of legal certainty.

Based on these reasons, the researcher is interested in examining the final and binding of the Decision of the Election Organization Ethics Council reviewed based on the Constitutional Court Decision Number 32 / PUU-XIX / 2021 and Law Number 7 of 2017 concerning Elections as a study.

## **II. RESEARCH METHODS**

The research method used was normative juridical (Ansari & Negara, 2023). In preparing this legal research, researchers used the statute approach method (Al-Fatih & Siboy, 2021), which is carried out by examining all laws and regulations related to the legal issues being addressed. The legal materials used were the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, and Constitutional Court Decision Number 32/PUU-XIX/2021. In this case, the researcher used an analysis of legal material, namely descriptive-qualitative, which is to present the material which is then analyzed using several conclusions as findings from the research results, research approach with conceptual method (conceptual approach) (Al-Fatih, 2023), which is a type of approach in legal research that provides an analytical point of view of solving problems in legal research seen from the aspect of the legal concepts behind it, or it can even be seen from the values contained in the norming.

## **III. RESULTS AND DISCUSSION**

### **1. Final and binding decisions of the Election Organization's Ethics Council in the light of Constitutional Court Decision Number 32/PUU-XIX/2021 and Law Number 7/2017 on Elections**

Final in the decision of the Election Organization Ethics Council means that the decision is no longer available for other legal remedies or further legal remedies after the enactment of the DKPP decision since it was applied and pronounced in an open plenary session of the DKPP which is open to the public. Meanwhile, the binding decision of the Honorary Council of the General Election Organizer is that a decision of the Election Organization Ethics Council as a decision is directly binding and compelling so that all state power organizing institutions and including judicial bodies are bound and obliged to implement the decision of the Election Organizer Ethics Council as it should be decided by DKPP. The implementation of the final and binding DKPP decision is then obliged to be followed up properly by the KPU, Bawaslu, as well as by the Government and institutions that are bound.

Thus, the meaning of the final and binding DKPP decision means that it is no longer closed to all possibilities to take legal remedies afterwards. When the DKPP's decision is pronounced in



a plenary session, then the legally binding force is born (binding). The phrase final for DKPP's decision means that the decision can be implemented immediately. In other words, after receiving a decision, there are no more judicial forums that can be pursued.

Reviewed in accordance with the decision of the Constitutional Court Number 32/PUU-XIX/2021, it explains that the DKPP decision is final and binding. 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 DKPP's decision. The product can be the object of a State Administrative Court lawsuit. According to the decision of the Constitutional Court Number 32/PUU-XIX/2021, the phrase "final and binding" in Article 458 paragraph (13) of Law Number 7/2017 on Elections is interpreted as binding for the President, KPU, Provincial KPU, Regency/City KPU and Bawaslu, which is a decision of a state administrative official which has a concrete, individual and final nature, so that it can be used as an object in the state administrative court. The Constitutional Court emphasized that DKPP's position is not as a judicial institution, but as an institution equal to KPU and Bawaslu. With the design of DKPP's binding decision, the President as the party given the power to dismiss the KPU Commissioner has the obligation to issue a Presidential Decree which contains an explanation related to the dismissal of the KPU Commissioner. Thus, KPU Commissioners cannot run legal remedies to fight DKPP's decision. What can be done is to take legal action through a lawsuit to the State Administrative Court to cancel the Presidential Decree, whose content is to dismiss the KPU commissioners concerned.

Reviewed in accordance with Law Number 7 of 2014 concerning General Elections, in Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, the DKPP's decision is final and binding, meaning that the decision cannot be made legal remedies and can be implemented immediately. Final means that there are no more courts that can be taken for legal remedies, and binding means that the decision of the DKPP is a decision that can be implemented immediately. In the explanation of Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, the explanation of article 458 paragraph (13) does not contain the definition of the phrase "final and binding". The explanation of the article only mentions "clear enough". Whereas a decision that is interpreted to have the meaning of final and binding is a decision that cannot be made further legal remedies and the decision can be immediately implemented because of the bindingness of a decision. The unclear interpretation of the phrase final and binding DKPP decision in article 458 paragraph (13) of Law Number 7 of 2017 concerning general elections results in multiple interpretations and regulatory disputes with administrative justice.

Final means that the settlement of the case has been completed and ended, while the meaning of the word binding is that the decision is binding and as something that must be carried out by the party required to do so (Winata, 2020). According to the principle of *res judicata pro veritate habetur*, which states that a principle that is no longer possible to make legal remedies, it is declared as a decision that has definite legal force. So, the phrase final and binding on DKPP's decisions that are final and binding must be seen as a decision that has permanent legal force (*in cracht van gewijsde*).

The decision without an appeal process is a violation of the ethics of the election judicial process. After the DKPP hearing, several problems arose, namely the decision related to ethical violations, DKPP dismissed Evi Novida Ginting from her position. The decision is considered

unacceptable in the legal system in Indonesia, because KPU commissioners are appointed based on procedures according to the Law.

The settlement of disputes over ethical violations has a new chapter, the uncertainty and ineffectiveness of the implementation of the decision, the case of Evi Novida Ginting as a KPU commissioner who was dismissed from her position. Following the review and hearing of the Presidential Decree on dismissal by the PTUN, instructing the President to revoke the decision and reappoint Evi Novida Ginting to her previous position at the KPU. DKPP's binding and final decision regarding the settlement of this ethical violation cannot be followed up. Therefore, this settlement process must be carried out judicially, and has the quality of problem solving.

The Panel of Judges in deciding the case of Evi Novida Ginting Manik has an argument that DKPP eliminated Evi Novida's right to defend herself during the DKPP code of ethics trial, in this case Evi Novida was not given the opportunity to defend, especially the defense of her dismissal. Also, the State Administrative Court Judges considered that it was contrary to the minimum quorum requirement during the DKPP plenary meeting. In this case, the decision-making plenary meeting regarding the imposition of sanctions for violations of the code of ethics must meet a quorum of 5 people, but at that time it was not fulfilled, only 4 people attended. Thus, the Jakarta Administrative Court granted Evi Novida's lawsuit, which was related to the revocation and cancellation of the object of dispute in the Defendant's case. The decision of the Administrative Court must be able to provide legal objectives, namely justice, certainty and expediency.

In applying the law, the objectives of the law must be achieved, one of which is justice. In the case of Evi Novida Ginting Manik, there is justice where Evi Novida Ginting Manik can submit her case to the Administrative Court to obtain justice for herself. In this case, the law has provided space for Evi Novida to claim her rights fairly so that she can be reactivated as a member of the General Election Commission after the DKPP decision which decided to dismiss Evi Novida as a member of the KPU. Thus, the legal objective, namely the justice aspect in the Evi Novida case, has been achieved.

The decision of the Administrative Court Judges must reflect expediency, where when the Administrative Court judges not only apply the law textually, but the decision can be executed in reality so as to provide benefits for the interests of the litigants. In the decision of Evi Novida's PTUN case, it raises a problem where the Administrative Court does not have the authority to decide the case because the DKPP's decision based on Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections is final and binding so that no legal remedies can be taken at the State Administrative Court. The decision of the State Administrative Court has made Evi Novida Ginting Manik reactivated as a member of the General Election Commission (KPU) because with Presidential Decree (Keppres) No. 83 / P / 2020 which revokes Presidential Decree No. 34 / P / 2020 after the issuance of the decision. The State Administrative Court is considered to have greatly harmed electoral ethics and legal certainty for violations of election ethics. With this decision, the decision of the Election Organization Ethics Council (DKPP) is no longer seen as a final and binding decision for election organizers. So that the State Administrative Court will become a land to provide forgiveness in cases that have tarnished organizers who damage the integrity of democracy as a whole.

From the aspect of certainty, the principle of legal certainty can be reflected in the output of DKPP's decision which should be in the form of a recommendation instead of dismissing Evi Novida Ginting Manik as a member of the KPU, because the dismissal of Evi Novida Ginting Manik should be returned to the relevant institution that appointed Evi Novida Ginting Manik as a member of the KPU. Thus, the DKPP decision can create legal certainty in its implementation, because the authority to dismiss as executor should be returned to the relevant institution that appointed Evi Novida Ginting Manik.

The uncertainty of Evi Novida Ginting Manik's case, which has previously been ruled a serious ethical violation by DKPP, can have a further impact on the determination of election results related to her case. It will also have an impact on the integrity of the KPU in general as an organizer. The broader impact is the uncertainty over the election ethics decision through DKPP which should be final and binding in accordance with Law Number 7 Year 2017 on General Elections. As well as uncertainty regarding the content of the DKPP's decision that can dismiss Evi Novida Ginting Manik, because the dismissal of Evi Novida Ginting Manik should be carried out by the relevant institution that appointed Evi Novida Ginting Manik as a member of the KPU, it causes legal uncertainty over the DKPP's decision.

Based on DKPP's final and binding decision, the TUN court should not have the authority to handle Evi Novida Ginting Manik's case because the decision issued by DKPP handling Evi Novida's case has no further legal remedies because it is final. Thus, Evi Novida Ginting Manik's case does not show the existence of legal objectives, namely certainty and expediency. Certainty is that a DKPP case based on article 458 paragraph (13) of the Election Law is final and binding so that there are no further legal remedies, but in this case, Evi Novida can still file legal remedies at the State Administrative Court. The case also does not provide legal expediency, which should provide benefits to litigants, but the realization of the applicable law still provides confusion because DKPP's decisions that should not be subject to further legal remedies due to the decision being "final and binding" can be subject to legal remedies.

The decision without an appeal process is a violation of the ethics of the election judicial process. After the DKPP hearing, several problems arose, namely the decision related to ethical violations, DKPP dismissed Evi Novida Ginting from her position. The decision is considered unacceptable in the legal system in Indonesia, because KPU commissioners are appointed based on procedures according to the Law. Thus, the dismissal must involve the procedures of the law. The involvement of the legal system shows that law enforcement will have binding force when the case is adjudicated by state judicial bodies such as the Supreme Court and the Constitutional Court.

The nature of the decision of the Election Organization Ethics Council (DKPP) is not the same as final binding in general judicial institutions. Because DKPP is an internal instrument of the election organizers authorized by law. DKPP's final and binding decision is binding for the President, KPU, Provincial KPU, Regency/City KPU or Bawaslu who carry out DKPP's decision. Thus, the procedure of checks and balances on DKPP still exists (Humas MK RI, n.d.). According to Topo, the DKPP's final and binding decision, which is not limited in meaning, causes the decision of the State Administrative Court, which is a follow-up to the DKPP's decision, not to be obeyed by the DKPP. DKPP's misunderstanding of the existence, nature, and function of the State Administrative Court's decision can greatly harm members of the KPU and Bawaslu. This is because DKPP does not consider that the decision of the State Administrative



Court exists and applies. In the legal system and also in other countries, the judicial decision must be respected and implemented unless it can still be challenged. Furthermore, other institutions have the responsibility to follow up on DKPP's decision. DKPP must give respect to State Administrative Court decisions or other judicial decisions if there is involvement with other institutions (Republic of Indonesia Constitutional Court, n.d.)

Final and binding in the provisions of Article 458 paragraph (13) of Law Number 7/2017 on General Elections which states "The decision as referred to in paragraph (10) is final and binding, in the Constitutional Court Decision Number 32/PUU-XIX/2021 does not have binding legal force as long as it is not interpreted, "The decision as referred to in paragraph (10) is binding for the President, KPU, Provincial KPU, Regency/City KPU, and Bawaslu is a decision of a State Administrative official that is concrete, individual, and final, which can be the object of a lawsuit in the State Administrative Court." In the Constitutional Court Decision Number 32/PUU-XIX/2021, the Constitutional Court emphasized that DKPP is not a judicial institution, so that DKPP's decision is a decision of a State Administrative official that can be the object of a lawsuit at the State Administrative Court (Fitria Chusna Farisa, n.d.).

It means that the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu must implement the DKPP Decision. However, if there are parties who do not accept the decision, they can file a lawsuit against the decision issued by the institution that follows up on the DKPP decision to the State Administrative Court. Thus, the state administrative court decision that has been issued *incracht* must be obeyed as a decision of a judicial body that has executorial power. In other words, that the final and binding is that the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu only follow up on the DKPP Decision whose products can be the object of a lawsuit in the State Administrative Court. Thus, within this scope, the President, KPU, Provincial KPU, Regency / City KPU, and Bawaslu as direct superiors who have the authority to appoint and dismiss election organizers at their level do not have the authority to have a different opinion that is contrary to the DKPP Decision or the State Administrative Decision that corrects or strengthens the DKPP Decision (Fitria Chusna Farisa, n.d.).

The conflict between the two decisions creates uncertainty in the execution portion, resulting in confusion between the implementation of the State Administrative Court's decision which is legally binding (*incracht*) considering that the President did not file an appeal or cassation and the DKPP's execution of a final and binding decision. In these two decisions, the President ignored the DKPP decision and issued a new Presidential Decree as a follow-up to the State Administrative Court decision to return Evi to her previous official position as a commissioner of the General Election Commission. In this case, the President seems to adhere to the principle of *res judicata pro veritae habetur* (Ahmad Siboy dan Dewi Cahyandari, 2022, pp. 638–639).

In Law Number 7 of 2017 concerning General Elections, related to the phrase "final and binding" in article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections, there is no further explanation in the article regarding the meaning of the phrase "final and binding" in the decision of the Election Organization Ethics Council (DKPP). The decision of the Constitutional Court Number 32/PUU-XIX/2021 does not provide changes to the phrase final

and binding DKPP decision, thus Law Number 7 of 2017 concerning General Elections has provided accommodation to the decision of the Constitutional Court Number 32/PUU-XIX/2021.

## **2. Final and Binding Decision of the Election Organization Ethics Council viewed from the Legal Certainty Aspect**

Legal certainty is when a rule regarding the final and binding of DKPP decisions is made and promulgated with certainty because it regulates clearly and logically, so that it does not cause doubts (multiple interpretations), is logical and has predictability. According to Gustav Radburch, legal certainty is the certainty of the law itself. Thus, the aspect of legal certainty is needed for the realization of laws and regulations because legal certainty is the main principle of the principle of the rule of law. Legal certainty has a close relationship with positive legal regulations, in this case the rules related to the final and binding nature of DKPP decisions, which are issued by the state and the role of the state in implementing these positive laws. Legal certainty aims to ensure that positive law is applied without discrimination.

In the theory of legislation, the rules in the law are still valid as long as they are not canceled (in testing the law). DKPP's stance, which is still firm, has a reason because Article 458 paragraph (13) of Law No. 7/2017 on General Elections has not been canceled and is therefore still valid. So, this raises a legal solution in giving its meaning. How the nature of "final" is not final in reality, so it does not provide legal certainty in the scope of enforcing the code of ethics of election organizers (Zulkifli Aspan, 2022, p. 101). The meaning of certainty regarding the meaning of final and binding in DKPP decisions is that a regulation that has been promulgated must definitely be implemented. As contained in Article 458 paragraph (13) of the Law on Elections, the phrase final and binding must be interpreted with no further legal remedies for DKPP decisions. The phrase final and binding DKPP decision contained in the provisions of Article 458 paragraph (13) of the Law on Elections must obtain legal certainty by revising the phrase so that it does not give different interpretations. Because, the meaning of final and binding means that a decision is not available for further legal remedies and must be implemented.

The final DKPP decision means that there is no need for further legal action. With the issuance of a decision that has a final nature, the case being examined is terminated or decided. The final DKPP decision is the last action of the court in determining the rights of the applicant in resolving all matters in a dispute, and the litigants must submit to and implement the final decision. Thus, according to the principle of legal certainty against the final and binding nature of the DKPP decision in Article 458 paragraph (13) of the Law on Elections requires that the DKPP decision can be implemented or executed because a decision that cannot be executed makes the decision meaningless and does not provide a sense of justice for the affected party. With the opening of the opportunity to file a legal appeal to the State Administrative Court through the decision so that execution cannot be carried out, it can be concluded that the DKPP decision is still not final. Even the DKPP's decision can be filed a legal appeal to the State Administrative Court.

Legal solutions to these problems are urgently needed, not only to provide legal certainty in DKPP decisions, but what is more crucial is how to enforce ethics for election organizers through judicial procedures at DKPP. It is as said by Jimly Asshiddiqie that "The democratic system that we build is expected to be supported by the uprightness and respect of law and ethics

simultaneously. We must build a healthy democracy supported by "the rule of law and the rule of ethics" together. "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 (Zulkifli Aspan, 2022).

To establish a Court of Ethics for ethical problems can only be done in 2 ways as follows: 1) the process of forming a state institution or ethics court can be formed through law. In this case, the Ethics Court is formed as a state institution that has the function of adjudicating against ethical violations of state officials. The ethics court established in the Law must be equipped with the authority to decide a final and binding decision. The form of sanctions that can be issued by the ethics court can take the form of: a) written reprimand; b) temporary dismissal from duty; and c) an order to dismiss, which is submitted to the party authorized to dismiss. 2) The establishment of an ethics court can be done through the fifth amendment to the 1945 Constitution in which arrangements regarding the institutionalization of the ethics court are included in the constitution so that it becomes an important organ of the constitution in guarding the ethics and behavior of state officials. The institutionalization of the ethics court in the Judicial Power family is not impossible but a necessity by looking at the development of the rule of ethics (Harmoko M Said, 2021, p. 34). The expected design of the authority of the ethics court is to be able to provide strict sanctions up to the level of dismissal of state officials who commit acts that violate moral values.

Despite carrying out a "quasi-judicial" function in the electoral sphere, ethical judicial decisions through DKPP should have dignity and have an influence on the ethical enforcement of election organizers. Therefore, DKPP decisions that are final and binding contained in the provisions of article 458 paragraph (13) of the Law on Elections should have legal force that is truly final and binding to be carried out without judicial review. The recent testing through judicial process in the State Administrative Court can cause the decision to have no final force and no legal certainty. In fact, DKPP's decision is an ethical area, but it is tested through the administrative area through the issuance of a dismissal decision as a State Administrative Court's decision (Harmoko M Said, 2021). The Election Organization Ethics Council does examine ethical issues, but the administrative judge examines the product of the decision of the Election Organization Ethics Council, to assess whether the decision was taken with the correct procedure.

In the provisions of article 458 paragraph (13) of the Election Law, related to the existence of the phrase final and binding does not include an explanation regarding the definition of the phrase "final and binding". The Election Law only explains that the explanation of Article 458 paragraph (13) of the Election Law is "quite clear". This is different from what is mentioned in the provisions of article 10 of the Constitutional Court Law, which states the explanation that the phrase "final and binding" of the Constitutional Court's decision means that the decision is immediately in effect from the time it is pronounced and no further legal remedies can be taken. In the Constitutional Court's decision, final and binding also includes binding legal force in *mutatis mutandis*.

In terms of legal certainty, there are several legal uncertainties. First, regarding the final and binding DKPP decision, the scope has become broader in Law Number 7/2017 on General

Elections after the Constitutional Court Decision Number 32/PUU-XIX/2021. Second, Law No. 7/2017 on General Elections does not mention the existence of legal remedies as a result of the issuance of the Presidential Decree, KPU Decree, Provincial KPU Decree, Regency/City KPU Decree and Bawaslu Decree as a follow-up action to the final and binding DKPP decision. Third, it is still possible for many lawsuits to occur due to DKPP's final and binding decision. Fourth, the decision issued by DKPP should be a recommendation so that it is not authorized to dismiss KPU members.

Thus, the provisions in article 458 paragraph (13) of the Election Law should be corrected by revising the phrase "final and binding", because the phrase "final and binding" causes chaos because there is a lack of clarity in the formulation of the phrase final and binding on the DKPP decision in article 458 paragraph (13) of the Election Law which results in more than one interpretation and disputes over the rules with the administrative court. If based on the decision of the Constitutional Court Number 32/PUU-XIX/2021, the phrase "final and binding" can still be subject to legal remedies through administrative decisions, then the phrase "final" in the rules in article 458 paragraph (13) of the Election Law should be eliminated through a revision process by only including the phrase "binding", so as to create legal certainty regarding the interpretation of its meaning. And, the explanatory provisions in article 458 paragraph (13) of the Election Law should be added with "binding for the President, KPU, Provincial KPU, Regency/City KPU, and Bawaslu".

In a dissertation entitled "Political Law of Election Dispute Resolution: Initiating the Establishment of an Election Court in Indonesia" which answers the problem of resolving election disputes in Indonesia and the ideal election court in the future. The results showed that the legal politics of resolving election disputes has not been institutionalized strongly and stably in one institution. Two institutions, namely the Supreme Court and the Constitutional Court with different characters and constitutional mandates, take turns being the place to resolve election disputes (Erwin Moeslimin Singajuru, 2022).

The different procedural processes and decisions of the two often negate each other and cause legal uncertainty and ultimately do not provide a sense of justice. Thus, in the future, there is a need for an election judicial institution with a special mandate to hear election disputes established under the Order of Law No. 7/2017 on General Elections, so that there is legal consistency, legal certainty, and justice in resolving election disputes. The solution is to create an election institution that is more independent, credible and transparent (Erwin Moeslimin Singajuru, 2022). Thus, a legal solution is needed to establish a special election court to create legal certainty in handling election disputes in Indonesia.

The proposal to institutionalize an ethics court is necessary because the complexity of ethics enforcement is not sufficiently resolved through internal assemblies. The blunt action of independent and non-independent state commissions is due to the ineffectiveness of the way of working or the internal settlement mechanism for cases of ethical violations. In order for the rule of law paradigm to be in line with the rule of ethics paradigm. This important agenda is worthy and deserves to be developed and received very deep attention to realize the new era of the rule of ethics. Renewal is needed considering the development of Indonesian society which is increasingly democratic, demanding an effective, efficient, professional, transparent, accountable and reliable ethics justice system (Idul Rishan, 2017, p. 95).

It must be recognized that an institutional consolidation of the existing ethical supervisors is needed by organizing institutionalization in an integrated manner. Currently, the overlapping authority of ethical supervision has not been well formulated. This is evidenced by the weak adjudication process that is completed internally. It is not surprising that many allegations of ethical violations are not maximized. So that the rule of ethics is demanded in the 1945 Constitution to accommodate the institutionalization of ethical courts for state and government officials. There are 2 alternatives to institutional consolidation for existing ethics oversight organs, namely (Idul Rishan, 2017):

1. The first alternative, the institutionalization design could be through a law order. In this case, the construction of the ethics court is formed as an independent state institution that has the function of adjudicating violations of the organizers.
2. The second alternative can be done through the amendment of the 1945 Constitution, where the arrangements related to the institutionalization of the judiciary are regulated in the constitution so that it becomes an important organ of the constitution in guarding the ethics and behavior of state officials.

Thus, the institutionalization of the ethics court can be an integrated adjudication function for ethical violations so that it will create legal certainty. It can be concluded that DKPP's final and binding decision is essentially not similar to the meaning of final and binding in a court decision. This shows that the status and position of DKPP is interpreted from an administrative point of view only, so its decisions are considered unable to use judicial equipment. Thus, that DKPP can be categorized as a quasi-judicial institution and the nature of its decisions is not similar to the nature of the main court decisions. Therefore, the final and binding DKPP decision can only be interpreted as a recommendation because the dismissal of Evi Novida Ginting Manik should be carried out by the relevant institution that appointed Evi Novida Ginting Manik as a member of the KPU. In a different sentence, DKPP's decision is not final and binding as a judicial decision.

Therefore, based on the principle of legal certainty, Article 458 Paragraph (13) of Law Number 7/2017 on General Elections does not provide legal certainty, because it is binding and final on DKPP decisions, meaning that DKPP decisions cannot be made legal remedies and must be implemented. Thus, according to the author, in order not to become a problem related to the implementation of its execution, the phrase final in Article 458 paragraph (13) is deleted by only including the phrase "binding", so that legal certainty can be achieved because the phrase "final" causes multiple interpretations. The phrase "final" means that no further legal remedies can be filed. Meanwhile, based on the Constitutional Court decision 32/PUU-XIX/2021, it is interpreted that further legal remedies can still be filed. This causes overlapping regulations so that the phrase "final" must be eliminated in order to create legal certainty.

The settlement of disputes over ethical violations has a new chapter, the uncertainty and ineffectiveness of the implementation of the decision, the case of Evi Novida Ginting as a KPU commissioner who was dismissed from her position. Following the review and hearing of the Presidential Decree on dismissal by the State Administrative Court, it instructed the President to revoke the decision and reappoint Evi Novida Ginting to her previous position at the General



Election Commission. DKPP's binding and final decision regarding the settlement of this ethical violation cannot be followed up. Therefore, this settlement process must be carried out judicially, and has the quality of problem solving.

The Panel of Judges in deciding the case of Evi Novida Ginting Manik has an argument that DKPP eliminated Evi Novida's right to defend herself during DKPP's code of ethics trial, in which case Evi Novida was not given the opportunity to defend, especially the defense of her dismissal. Also, the State Administrative Court Judges considered that it was contrary to the minimum quorum requirement during the DKPP plenary meeting. In this case, the decision-making plenary meeting regarding the imposition of sanctions for violations of the code of ethics must meet a quorum of 5 people, but at that time it was not fulfilled, only 4 people attended. Thus, the Jakarta Administrative Court granted Evi Novida's lawsuit, which was related to the revocation and cancellation of the object of dispute in the Defendant's case. The decision of the State Administrative Court must be able to provide legal objectives, namely justice, certainty and expediency.

In applying the law, the objectives of the law must be achieved, one of which is justice. In the case of Evi Novida Ginting Manik, there is justice where Evi Novida Ginting Manik can submit her case to the State Administrative Court to obtain justice for herself. In this case, the law has provided space for Evi Novida to claim her rights fairly so that she can be reactivated as a member of the General Election Commission after the DKPP decision which decided to dismiss Evi Novida as a member of the General Election Commission. Thus, the legal objective, namely the justice aspect in the Evi Novida case, has been achieved.

The decision of the State Administrative Court Judges must be able to reflect expediency, where when the State Administrative Court judges not only apply the law textually, but the decision can be executed in reality so as to provide benefits for the interests of the litigants. In the decision of Evi Novida's PTUN case, it raises a problem where the state administrative court does not have the authority to decide the case because the DKPP's decision based on Article 458 paragraph (13) of Law Number 7 of 2017 concerning General Elections is final and binding so that no legal remedies can be taken at the State Administrative Court. The decision of the State Administrative Court has made Evi Novida Ginting Manik reactivated as a member of the General Election Commission (KPU) because the Presidential Decree (Keppres) No. 83/P/2020 revoked Presidential Decree No. 34/P/2020 after the issuance of the decision. The State Administrative Court is considered to have greatly harmed electoral ethics and legal certainty for violations of election ethics. With this decision, the decision of the Election Organization Ethics Council (DKPP) is no longer seen as a final and binding decision for election organizers. So that the State Administrative Court will become a land to provide forgiveness in cases that have tarnished organizers who damage the integrity of democracy as a whole.

From the aspect of certainty, the principle of legal certainty can be reflected in the output of DKPP's decision which should be in the form of a recommendation instead of dismissing Evi Novida Ginting Manik as a member of the KPU, because the dismissal of Evi Novida Ginting Manik should be returned to the relevant institution that appointed Evi Novida Ginting Manik as a member of the KPU. Thus, the DKPP decision can create legal certainty in its implementation, because the authority to dismiss as executor should be returned to the relevant institution that appointed Evi Novida Ginting Manik.

The uncertainty of Evi Novida Ginting Manik's case, which has previously been ruled a serious ethical violation by DKPP, can have a further impact on the determination of election results related to her case. It will also have an impact on the integrity of the General Elections Commission as an organizer. The broader impact is the uncertainty over the election ethics decision through DKPP which should be final and binding in accordance with Law Number 7 Year 2017 on General Elections. As well as uncertainty regarding the content of the DKPP's decision that can dismiss Evi Novida Ginting Manik, because the dismissal of Evi Novida Ginting Manik should be carried out by the relevant institution that appointed Evi Novida Ginting Manik as a member of the KPU, it causes legal uncertainty on the DKPP's decision.

Based on DKPP's final and binding decision, the State Administrative Court should not have the authority to handle Evi Novida Ginting Manik's case because the decision issued by DKPP handling Evi Novida's case has no further legal remedies because it is final. Thus, the Evi Novida Ginting Manik case does not show the existence of legal objectives, namely certainty and expediency. Certainty is that a DKPP case based on article 458 paragraph (13) of the Election Law is final and binding so that there are no further legal remedies, but in this case, Evi Novida can still file legal remedies at the State Administrative Court. The case also does not provide legal expediency, which should provide benefits to litigants, but in reality, the applicable law still provides confusion because DKPP decisions that should not be subject to further legal remedies due to "final and binding" decisions can be subject to legal remedies. The DKPP decision that decided Evi Novida did not provide legal certainty because legal remedies could still be taken against the DKPP decision which was "final and binding" and legal expediency was not achieved. Therefore, the legal objectives in the Evi Novida Eka Ginting case decided by the Administrative Court were not achieved.

#### **IV. CONCLUSION**

Based on the discussion above, the final and binding decision of the Election Organization Ethics Council viewed from the Constitutional Court Decision Number 32/PUU-XIX/2021 and Law Number 7 of 2017 concerning Elections, which states that according to the decision of the Constitutional Court Number 32/PUU-XIX/2021 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 a state administrative official which is concrete, individual and final, so it can be used as an object in the State Administrative Court. The Constitutional Court provides confirmation that the position of DKPP is not a judicial institution, which is none other than an institution that is parallel to the KPU and Bawaslu.

According to the principle of legal certainty, the phrase final and binding in the DKPP decision in Article 458 paragraph (13) of the Law on Elections creates legal uncertainty where the meaning of final and binding means that a decision cannot be made further legal remedies. The final and binding DKPP decision in Article 458 paragraph (13) of the Law on Elections requires that the DKPP decision can be implemented or executed because a decision that cannot be executed makes the decision meaningless and does not provide a sense of justice for the aggrieved party. With the opening of the opportunity to file a legal appeal to the State Administrative Court and through its decision that the execution cannot be carried out, it can be

concluded that the DKPP's decision is still not final. In fact, the DKPP decision can be submitted to the State Administrative Court based on the decision of the Constitutional Court Number 32/PUU-XIX/2021. Thus, the provisions of Article 458 paragraph (13) of Law Number 7/2017 on Elections cause legal uncertainty, because the phrase final and binding in the DKPP's decision means that the DKPP's decision cannot be subject to legal remedies and must be implemented. Therefore, the final phrase in Article 458 paragraph (13) of the Law on Elections should be eliminated in order not to cause multiple interpretations. DKPP's decision to dismiss KPU commissioner Evi Novida Ginting Manik raises legal uncertainty, because the dismissal should be returned to the relevant institution that appointed Evi Novida Ginting Manik not to DKPP's decision, because the output of DKPP's decision should be a recommendation not to dismiss, since the authority to dismiss should not be the authority of DKPP but the authority of the relevant institution that appointed Evi Novida Eka Ginting.

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