



## LEGAL BRIEF

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# Legal Analysis of the Regency/City Election of The Watchdog Authority in Handling the Violations of the Code of Ethics for the Sub District General Election Committee of Ad Hoc

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### Abstract

This research aims to analyze the authority had by the general election supervisory agency of regency/city in handling violations of the code of ethics for the sub-district general election supervisory committee and outlines the ideal concepts of handling violations of the code of ethics for the sub-district general election supervisory committee. This research used normative legal research method which examined and resolved legal issues done by analyzing the legal materials was primary legal materials and secondary legal materials. Those legal materials were then analyzed using a statutory, historical, comparative and conceptual approach in order to resolved the legal issues examined and drew conclusions on researched legal issues. This research' results show that: 1. The implementation of the authority of the regency/city election of the general election supervisory agency in the process of handling violations of the election supervisory committee of Ad Hoc has been carried out in the 2019 election, However, it was just that the implementation has not been considered effective inasmuch as there have been still several factors that hindered its implementation, such as the legal factor itself, the lack of harmony in regulations related to the implementation of handling authority. Then, the institutional factor, institutionally the general election supervisory agency of the regency/city that has hierarchical relationship with the election supervisory committee of Ad Hoc, and the third factor related to the high number of the violators of the code of ethics of the election supervisory committee of Ad Hoc in all over Indonesia, 113 cases of which 102 were proven and 11 were not proven; 2. In the process of handling the violations of the code of ethics, the sub-district general election supervisory committee should have been formed of election organizer ethics council on an Ad Hoc basis to examine Ad Hoc election organizers with 1 person of the general election commission, 1 person for the element of election supervisory agency and 1 person from community that the aspects of the audit authority were examined openly and presented both sides based on the principle of audi et alterm partem.

**Keywords:** Code of Ethics, Legal Analysis, Violations.

## A. Introduction

Today the majority of countries in the world choose a democratic system in the process of their constitutional life. It is inevitable that Indonesia as an independent and sovereign State explicitly asserts as a sovereign state of the people as stated in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. With this affirmation, as a form of manifestation of people's sovereignty, it is designed a democratic contest.

According to A. Pangerang Moenta<sup>1</sup>, there are 5 elements of democracy namely the existence of equality values, the people are positioned as policy makers in the state, the existence of freedom, and decisions based on the principle of majority, and there are periodic elections for the determination of people's representatives.

Based on this, one of the elemental principles that will be discussed is related to periodic elections called General Elections (Pemilu), which are a means of popular sovereignty which are carried out directly, publicly, freely, secretly, honestly and fairly every five years for elect Members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council.

As a consequence of the direct implementation of general elections, election management institutions have been formed to organize the democratic contestation periodically. Constitutionally, the position of election organizers is set forth in Article 22E Paragraph (5) of the 1945 Constitution of the Republic of Indonesia which affirms that general elections are held by an election commission that is national, permanent, independent. This is to prevent the co-optation of elements that can create neutrality in the process of organizing elections.

Jimly Assiddiqie<sup>2</sup> explained that the election organizers must be neutral and free from intervention from political parties and state officials who reflect the interests of political parties or participants or candidates for general elections. The Election contestants are (i) political parties and their members who can become candidates in the General Election; (ii) candidates or members of the People's Representative Council; (iii) candidates or members of the Regional Representative Council; (iv) candidates or members of DPRD; (v) candidate or President and Vice President; (vi) candidate or Governor and Deputy Governor; (vii) Candidates or Regents and Deputy Regents; (viii) candidate or Mayor and Deputy Mayor; because they are elements that have a direct or indirect interest in the decisions of the General Elections Commission (KPU).

The naming of the General Elections Commission (KPU) is the fruit of a legislative product because there is no explicit confirmation related to the naming of the election management body itself. In his description, Jimly Assiddiqie<sup>3</sup> describes in Article 22E of the 1945 Constitution of the Republic of Indonesia the word general election commission is written in lowercase. It is intended that the general election commission referred to in Article 22E is not a name, but a general word for referring to the election management body.

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<sup>1</sup> A. Pangerang Moenta, *Permusyawaratan dan DPRD Analisis Aspek Hukum dan Produk Permusyawaratan*, Intelegensia Media:Malang, 2017. hal. 31

<sup>2</sup> Jimly Assiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI:Jakarta, 2006, hal. 186

<sup>3</sup> Jimly Assiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Sekretariat Jenderal Mahkamah Konstitusi RI:Jakarta, 2006, hal. 235

For this reason, Article 22E is the constitutional basis for the existence of the general election management body, which is called the "general election commission" in lowercase letters which are interpreted as KPU, Election Supervisory Agency (Bawaslu), and the Election Organizer Ethic Council (DKPP)<sup>4</sup>

The contestation of democracy is not carried out without regard to the quality of democracy which is based on Direct, General, Free of Secrets, Honest and Fair. There are 3 (three) institutions that are mandated through legislation products to carry out a series of processes in the implementation of elections in Indonesia.

General Election Commission is an institution that is mandated with the task of holding elections that are national, permanent, and independent in carrying out elections. To hold elections throughout the territory of the Unitary State of the Republic of Indonesia, the KPU consists of: KPU, Provincial KPU, Regency/Municipal KPU, District Election Committee (PPK), Voting Committee (PPS), Overseas Election Committee (PPLN), Voting Organizer Group (KPPS), the Overseas Voting Organizing Group (KPPSLN) with each task according to its level.

In addition to technically there are Election Organizing Institutions, there are also Election Supervisory Institutions as an election organizer unit. The Election Supervisory Body is named Bawaslu. Similar to KPU, Bawaslu also consists of Bawaslu, Provincial Bawaslu, Regency/City Bawaslu, Sub-district Panwaslu, Urban/Village Panwaslu, LN Panwaslu, and TPS Supervisors. And the duties and authorities of each in accordance with the scope of the region.

In addition to the two institutions above as spearheading the implementation of the General Election, there is also one institution that is constitutionally mandated as an Election Organizing Institution with the role of maintaining the honor of the Election organizers with the task of deciding and examining allegations of violations of the Election Organizer's Code of Ethics. In order to maintain the independence, integrity, and credibility of election organizers down to the lower levels<sup>5</sup>, the DKPP may form anregional audit team in each province *ad hoc*<sup>6</sup>. The authority of the Regional Examination Team established by DKPP is to examine and decide on violations of the code of ethics committed by PPK, PPS, KPPS, Sub-district Panwaslu, Kelurahan/Village Panwaslu, and TPS Supervisors.

However, in the process of implementing each of these institutional tasks and functions, there is a conflict of authority, one of which is related to the authority in the process of handling violations of the code of ethics for election organizers, especially election organizers *ad hoc*<sup>7</sup>. Through DKPP Regulation Number 3 of 2017 as amended several times, most recently through DKPP Regulation Number 1 of 2021 concerning the Second Amendment to the Regulation of the Honorary Council of General Election Organizers Number 3 of 2017 concerning Guidelines for Proceedings of the Code of Ethics for Election Organizers, the handling of violations of the code of ethics for organizers is *ad hoc* delegated for the handling of which is handled by each Election Organizing Institution at the Regency/City level. In the event that the

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<sup>4</sup> Fajlurrahman Jurdi, Pengantar Hukum Pemilihan Umum, Kencana Prenadamedia Group: Jakarta, 2018, hal. 159

<sup>5</sup> For the ranks of KPU consisting of KPU, Provincial KPU, Regency / City KPU, PPK, PPS, and KPPS. And for the bawaslu ranks consisting of Bawaslu, Bawaslu Province, Bawaslu Regency / City, District Panwas, Village/ Village Panwas, TPS Supervisor.

<sup>6</sup> It can be seen in Article 164 of Law 7 of 2017.

<sup>7</sup> The *ad hoc* election organizers in question are Panwaslu Subdistrict, Panwaslu Kelurahan / Village, TPS Supervisor, PPK, PPS, KPPS.

Defendant and/or the Reported Party are Election Organizers serving as members: a. District Panwaslu; b. Panwas Kelurahan/Village; c. Polling Station Supervisors, Complaints and/or reports are submitted directly to Regency/Municipal Bawaslu based on the Bawaslu Regulations.

With the delegation of authority, it can actually cause legal uncertainty because there is a horizontal conflict of rules between Article 459 paragraph (3) of Law 7 of 2017 with DKPP Regulation No. 3 of 2017 as amended several times, most recently through DKPP Regulation No. 1 of 2021, as well as the authority delegated by DKPP to Regency/City Bawaslu, in fact, the examination is closed and very vulnerable to *conflicts of interest*, because Regency/City Bawaslu has a hierarchical relationship with Election Supervisors *ad hoc*<sup>8</sup> so that Regency/Municipal Bawaslu, which has the task of guidance and supervision to election supervisors *ad hoc* providing, has the potential to not give fair decisions on violations of the code of ethics committed by election supervisors *ad hoc*.

Based on the background above, several problems can be formulated as follows:

1. How is the implementation of the authority of Regency/City Election Supervisory Agency in the process of handling violations of the code of ethics of the General Election Supervisory *Ad Hoc* Committee?
2. What should be the process of handling violations of the code of ethics of the Election Supervisory *Ad Hoc* Committee?

## B. Research Methods

This research uses normative legal research, normative legal research (doctrinal law) is legal research that is conceptualized as legal research written in laws and regulations (*law in books*) or law is conceptualized as rules or norms that guide behavior<sup>9</sup>

According to Peter Mahmud Marzuki<sup>10</sup> legal research is an activity undertaken to resolve legal issues. Law is part of social norms in which it is full of values<sup>11</sup>. So that to resolve these legal issues, it is necessary to study the coherent truth between legal norms and legal principles, legal rules with legal norms and then coherence between behavior (*act*) and legal norms or legal principles<sup>12</sup>

Irwansyah<sup>13</sup> describes normative research which is distinguished between thesis research, thesis research and dissertation research. For thesis research, it is explained that the focus point is on theoretical research (legal theory) to explore and test legal theories, legal principles, doctrines or legal teachings that are urgent and relevant to be used simultaneously in the process of solving legal problems that are increasingly widespread and increasing, whose legal rules are considered no longer sufficient to provide the required solution.

This legal research uses the approach of the law (*Statute Approach*), (*Historical Approach*), (*Historical Approach*), (*Comparative Approach*), (*Comparative Approach*),

<sup>8</sup> Can be seen in Article 89 paragraph (3) of Law 7 of 2017

<sup>9</sup> Amiruddin, Zainal Asikin, Pengantar Metode Penelitian Hukum, PT. Raja Grafindo Persada: Jakarta. 2008. hal. 118

<sup>10</sup> Peter Mahmud Marzuki, Penelitian Hukum Edisi Revisi, Prenadamedia Group: Jakarta. 2005. hal. 60

<sup>11</sup> Ibid. hal. 41-42

<sup>12</sup> Ibid. hal. 47

<sup>13</sup> Irwansyah, Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel Edisi Revisi, Mirra Buana Media, Yogyakarta. 2020. hal. 67

Conceptual Approach (*Conceptual Approach*). The approach of this law is to examine all laws and regulations relating to the legal issues under study. Second, this historical approach is carried out for studies related to the history of the existence of legal issues under investigation, namely those relating to the authority to handle the code of ethics for election administrators. Third, Comparative Approach This approach will be used in research to compare institutional designs and legal products related to the issues studied. Fourth, the conceptual approach that will be used examines the doctrines, views in legal science, so that researchers can find ideas related to the issues under study.

The legal materials studied are primary legal materials and secondary legal materials.

### **1. Primary Primary**

legal materials legal materials are legal materials that are authoritative in nature, which means they have authority. The primary legal materials are legislation, official records, or minutes of court proceedings in the making of legislation, as well as judges' decisions.<sup>14</sup> This research will use the laws and regulations related to the issue under study.

### **2. Secondary Legal Materials Secondary**

legal materials are legal materials that are not official in nature. Such as books, dictionaries, legal journals, as well as comments related to court decisions.<sup>15</sup>

The data collection techniques used in this study, legal materials are carried out by taking an inventory and identifying legal materials related to the title of the research conducted by the author by systematizing and classifying legal materials.

Analysis of legal materials is identified and inventoried then qualifications are carried out in accordance with the title of legal research carried out by the author after which an analysis is carried out to adjust the formulation of the problem and the research objectives to be completed. And finally, conclusions are drawn on the issues studied.

## **C. Discussion**

### **1. Implementation of the Authority of Regency/City Bawaslu in the Process of Handling Violations of the Panwaslu Code of Ethics Ad Hoc**

Since the transfer of authority to Handling Violations of the Election Supervisory Code *Ad hoc* through PerDKPP Number 3 of 2017 as amended several times, most recently through DKPP Regulation Number 1 of 2021, then followed up through The respective institutional regulations and for Bawaslu are followed up through Perbawaslu No. 4 of 2019, then the handling of violations of the code of ethics for election supervisors will automatically *ad hoc* switch.

In holding the 2019 Election. According to Rahmat Bagja<sup>16</sup> Bawaslu through Regency/City Bawaslu has dismissed 20 election organizers *ad hoc* who were proven to have violated the code of ethics. Meanwhile, 23 were given warnings, 7 were given warnings, 52 were given rehabilitation and other guidance. The number of

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<sup>14</sup> Ibid. hal. 181

<sup>15</sup> Ibid.

<sup>16</sup> Quoted on <https://www.bawaslu.go.id/id/berita/langgar-etik-bawaslu-berhentikan-20-penyelenggara-pemilu-ad-hoc>. Retrieved November 12, 2021, at 10:17 PM

findings/complaints submitted to Bawaslu through Regency/City Bawaslu were 113 cases each, with 102 proven and 11 unproven.

Furthermore, for the typology of violations, 45 cases violated neutrality as an election organizer, 44 cases violated professionalism, 7 cases violated other principles, and 6 cases violated the oath of promise. With details of North Sumatra Province (Sumut) with a maximum of 18 violations, then Gorontalo with 16 violations, North Maluku and East Java with 13 cases.<sup>17</sup>

Based on the data above, there are still quite a number of violations of the Panwaslu code of ethics *ad hoc* that occur and are spread throughout Indonesia. This is also a challenge in the implementation of handling violations of the Panwaslu code of ethics *ad hoc*.

To measure the effectiveness of the implementation of laws and regulations, especially the implementation of the authority of Regency/City Bawaslu in handling violations of the Panwaslu code of ethics *ad hoc*, according to Achmad Ali<sup>18</sup> in general, the factors that greatly affect the effectiveness of a legislation, are professional and optimal implementation of the role, authorities, and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing the legislation.

Then, Soerjono Soekanto<sup>19</sup> divides 5 factors that affect the effectiveness of the law, including:

- a) The Legal Factor itself (the Law);
- b) Law Enforcement Factors, namely the parties that form and apply the law;
- c) Factors of Facilities and Facilities that support law enforcement;
- d) Community factors, namely the environment in which the law applies and is applied;
- e) Cultural factors, namely the work, creativity, and taste based on human initiative in social life.

There are still some issues, especially issues relating to the enforcement of code violations Supervisory Committee *ad hoc*, one of which relates to the factors *legal*, if the review is handling arrangements violation of the Code, which is part of the authority DKPP, in Article 459 paragraph (1) and paragraph (3), affirmed as follows:

#### Article 459

(1) DKPP may form a regional inspection team to examine allegations of violations of the code of ethics for Election Organizers in the regions;

(3) The Regional Examination Team as referred to in paragraph (1) has the authority to examine and can decide on violations of the code of ethics committed by PPK, PPS, KPPS, Sub-district Panwaslu, Kelurahan/Village Panwaslu, and TPS Supervisors.

In Article 459, it is explicitly stated that those who have the authority to examine and can decide on violations of the code of ethics committed by PPK, PPS, KPPS, Sub-district Panwaslu, Village/Desa Panwaslu, and TPS Supervisors are the Regional Examination Team formed by DKPP.

It's just that, through DKPP regulation no. 3 of 2017 as amended several times, most recently through DKPP Regulation No. 1 of 2021, namely in Article 10B, it is

<sup>17</sup> Ibid.

<sup>18</sup> Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)* termasuk Interpretasi Undang-Undang (*Legisprudence*) Vol. I Pemahaman Awal, Prenadamedia Group: Jakarta. 2009. hal. 379

<sup>19</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Cet.13), Rajawali Pers: Jakarta. 2014. hal. 8

regulated "in the case of the contested and/or reported party, namely the Election Organizer who serves as a member: a. District Panwaslu; b. Panwaslu Kelurahan/Village; or c. Polling Station Supervisors, Complaints and/or Reports are submitted directly to Regency/Municipal Bawaslu by referring to the Bawaslu Regulations". which is followed up through Article 3 paragraph (2) of the General Election Supervisory Body Regulation Number 4 of 2019, it is emphasized that "The handling as referred to in paragraph (1) is carried out by the Regency/City Bawaslu against the Sub-district Panwaslu, Sub-district/Village Panwaslu, including TPS Supervisors".

If the rules are reviewed, the delegation of authority for Regency/Municipal Bawaslu through DKPP Regulations and Bawaslu Regulations is contrary to Law no. 7 of 2017. This can be seen from the rule of law regarding legal logic, according to Munir Fuady<sup>20</sup> to measure the consistency of a rule there are several legal rules including the Non-contradiction Rule, namely there should be no contradiction between one legal rule and another, so that between one norms with other legal norms must be harmonious, synchronous, and integrated (*Principle of integrity*), as well as derivative rules, namely legal rules at lower levels are part of higher-level legal rules drawn based on the principle of practical deduction.

Then, according to Ratna Dewi<sup>21</sup> it is necessary to synchronize, harmonize between DKPP regulations, Bawaslu regulations, and PKPU because there are no standards issued in the DKPP regulations how Bawaslu and KPU carry out the authority to handle ethical violations of franks, *ad hoc* resulting in KPU and Bawaslu translating themselves .

For law enforcement, in this case the authority of the Regency/City Bawaslu. It is still very difficult to handle violations of the code of ethics for Election Supervisors *ad hoc* because Regency/City Bawaslu and Panwaslu *ad hoc* have a hierarchical relationship so that in the event of a deadlock or problem encountered by the Election Supervisor *Ad hoc* , they will consult with Regency/City Bawaslu. This can potentially lead to a series of problems that blame each other. Election Supervisors *Ad hoc* can declare that they carry out something based on instructions or instructions from Regency/Municipal Bawaslu as a hierarchy above it.

Then, it is related to one of the factors, namely the community factor that is part of the general public, only in that problem, the object of the regulation of the Panwaslu code of ethics *ad hoc* is the Election Supervisor *ad hoc*. If viewed from the still many Panwaslu *ad hoc* fact that there are violating the rules, there are even Panwaslu *ad hoc* that have been dismissed, this is evidence that the process of violating the code of ethics of the Panwaslu is *ad hoc* still not effective in its implementation.

## **2. The Concept of Should the Authority to Handle Violations of the Panwaslu Code of Ethics *Ad Hoc***

Today, the discourse related to the existence of an ethical judiciary is still developing. There are several ideas for institutionalizing ethical justice to be like a modern judiciary, such as in judicial powers that apply the principles of openness and accountability in the examination process.

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<sup>20</sup> Munir Fuady, *Teori-Teori Besar (Grand Theory) Dalam Hukum*, Prenadamedia Group: Jakarta, 2013. hal. 128

<sup>21</sup> Quoted on <https://bawaslu.go.id/id/berita/penanganan-etik-penyelenggara-ad-hoc-dewi-usul-sinkronisasi-perbawaslu-pkpu-dan-peraturan>. Retrieved November, 12, 2021, at 1.23 pm

It is the same with the process of handling a violation of the code of ethics, especially election organizers. In this case, the DKPP as a public institution is required to provide a process of transparency or openness in the process of enforcing the code of ethics for election organizers.

For ethics itself, Jimly Assiddiqie<sup>22</sup> divides 5 (five) stages of ethical development, namely the theological stage, ontological stage, positivist stage, closed functional stage, and open functional stage.

**a Theological Stage**

At this stage, ethics is understood by mankind to be closely related to religion and is in the context of religious teachings.<sup>23</sup>

**b Ontological Stage**

In this stage, ethics is seen as growing and developing in the process of developing science as part of philosophy.<sup>24</sup>

**c The positivist stage**

In the 20th century, developments in compiling a code of ethics and code of conduct continued to grow rapidly, so that almost all professional organizations, community organizations, and the business world compiled them. The development of ethics which was originally unwritten and officially enforced during the 20th century was later developed into a formal system of rules such as positive law.<sup>25</sup>

**d Closed Functional Ethics**

In the development of ethics in the 20th century from ontological ethics to positivist ethics, there was also a transformation in the enforcement process. In its development, according to Jimly Assiddiqie<sup>26</sup> at the end of the 20th century the idea emerged to design institutional infrastructure for the enforcement of the code of ethics, especially in public institutions that require *trust*. However, at this stage the enforcement mechanism for the code of ethics is usually carried out in a closed manner, due to the consideration that the ethical system basically involves personal or private relationships

**e Open Functional Ethics**

As with other things, the dynamics of ethics according to Jimly Assiddiqie<sup>27</sup> also occurs and develops in the world today. In Indonesia itself, its development is still at a closed stage. As a result, the process of enforcing the code of ethics cannot be accounted for independently and openly to the public, which today demands greater openness, transparency, and public accountability in all areas of life.

In Indonesia, there is already a practice of enforcing a code of ethics, especially with the open judicial method as described by Jimly Assiddiqie<sup>28</sup>, the tradition of enforcing a code of ethics through an open process was pioneered by the DK-KPU since 2010, and has been continued by the DKPP until now, so that it can be sustainable. by applying the principles of modern justice that are objective, impartial, professional, open, transparent, accountable and with integrity.

### 3. History of the Honorary Election Organizing Council

<sup>22</sup> Jimly Assiddiqie, *Peradilan Etik dan Etika Konstitusi Perspektif Baru tentang 'Rule of law dan Rule of Ethics' & Constitutional Law and Constitutional Ethics*, Sinar Grafika:Jakarta, 2017, hal. 84

<sup>23</sup> Ibid.

<sup>24</sup> Ibid. hal. 87

<sup>25</sup> Ibid. hal. 88

<sup>26</sup> Ibid. hal. 90

<sup>27</sup> Ibid. hal. 92

<sup>28</sup> Ibid. hal. 95



For this reason, the history of DKPP will be described in the form of the table below.

DEWAN KEHORMATAN PADA UU NO. 12 TAHUN 2003	DEWAN KEHORMATAN PADA UU NO. 22 TAHUN 2007	DEWAN KEHORMATAN PADA UU NO. 15 TAHUN 2011	DEWAN KEHORMATAN PEYELENGGARAAN PEMILU PADA UU NO. 7 TAHUN 2017
<ul style="list-style-type: none"> <li>- Nomenclature used in Law No. 12 of 2003 is the Honorary Board of KPU,</li> <li>- its existence is limited to KPU elements only and is ad hoc. The KPU Honorary Board is mandated to examine complaints of violations of the code of ethics committed by KPU members. The Honorary Council in this period escorted the Election Organizers in 2004</li> </ul>	<ul style="list-style-type: none"> <li>- The Honorary Council was formed by the KPU and Bawaslu and is ad hoc. The composition of the KPU DK consists of: 5 people who come from 3 people from the elements of KPU members and 2 people from outside the KPU;</li> <li>- The composition of the Provincial KPU DK consists of: 3 people who come from 2 people from KPU elements and 1 person from elements outside the Provincial KPU;</li> <li>- The composition of DK Bawaslu consists of: 5 people from 1 KPU member, 2 Bawaslu members, 2 people from outside Bawaslu and KPU</li> </ul>	<ul style="list-style-type: none"> <li>- The nomenclature used by the Honorary Board of Election Organizers is permanent for 5 years;</li> <li>- The composition of its membership consists of: 1 person from the KPU element; 1 element of Bawaslu; 1 person from each political party in the DPR; 1 person from the government envoy; 4 people from public figures in terms of the number of political party envoys in the house of odd or 5 public figures in terms of the number of political party envoys in the DPR are even numbered;</li> <li>- The Secretariat is attached to the Bawaslu General Secretariat of Bawaslu.</li> </ul>	<ul style="list-style-type: none"> <li>- DKPP is permanent;</li> <li>- Only check for <u>pennyelenggara</u> that is permanent;</li> <li>- The composition consists of 7 people who come from 1 person from the KPU element ex officio, Bawaslu element ex officio, 5 people from the community elements recommended by the president 2 people, and 3 people from the DPR;</li> <li>- Establishment of a Regional Inspection Team;</li> <li>- Standing secretariat position</li> </ul>

#### 4. Judiciary Ethics / Enforcement Institutions Conduct

As part of a comparison against the institutions of conduct that exist, it will be described several agencies conduct below

KODE ETIK KEDOKTERAN (IKATAN DOKTER INDONESIA)	KODE ETIK ADVOKAT	KODE ETIK APARATUR SIPIL NEGARA	KODE ETIK KOMISI PEMBERANTAS KORUPSI
<ul style="list-style-type: none"> <li>- Established the Central Medical Code of Ethics (MKEK) Court, REGIONAL MKEK at the provincial level, MKEK Branch at the District / City level;</li> <li>- In enforcing the Code of Ethics, the MKEK Assembly was formed on an ad hoc basis;</li> <li>- The examination process is examined behind closed doors unless it is declared partially open or open in full as determined by a by-court ruling;</li> <li>- An appeal can be made on the verdict according to its level.</li> </ul>	<ul style="list-style-type: none"> <li>- Established an Honorary Council of Advocate Organizations at the Central and Regional levels;</li> <li>- The Honorary Council of Advocates establishes an Assembly consisting of Elements of the Honorary Council, experts / experts in the field of law, and community leaders;</li> <li>- The Regional Honorary Assembly to examine at the first level and formed 7 working days after the complete complaint, consisting of 5 people, 3 people from the element of advocate, 2 people from the non-advocate element, 1 expert or expert in the field of law, and 1 community leader;</li> <li>- An appeal can be made at the level above it and the appeal verdict is final and binding; The closed-door examination of the verdict was open.</li> </ul>	<ul style="list-style-type: none"> <li>- To oversee the implementation of basic norms, codes of ethics and codes of conduct of ASN, as well as the application of merit systems in ASN policy and management in government agencies, an institution named the State Civil Apparatus Commission (KASN);</li> <li>- The composition consists of: 1 chairman concurrently members, 1 vice chairman concurrently members, 5 members.</li> </ul>	<ul style="list-style-type: none"> <li>- To oversee the implementation of KPK duties and authorities, the Supervisory Board is established for a term of 4 years and can be re-elected for 1 term.</li> <li>- [The Board of Trustees consists of 5 people, 1 Chairman concurrently Members and 4 members;</li> <li>- If there is a violation of the code of ethics then a Board of Examiners of the Code of Ethics is established;</li> <li>- The process uses the principle of <u>audi et alteram partem</u> presenting the complainant and examined at the code of ethics examination hearing;</li> </ul>

KODE ETIK KEHAKIMAN		
KOMISI YUDISIAL	MAJELIS KEHORMATAN MAHKAMAH KONSTITUSI	DEWAN ETIK
<ul style="list-style-type: none"> <li>The Judicial Commission is an institution to maintain, uphold the honor, the dignity of judges within the scope of the Supreme Court;</li> <li>Is External;</li> <li>The composition consists of 7 people consisting of: 2 former judges, 2 legal practitioners, 2 legal academics, 1 member of the Society.</li> </ul>	<ul style="list-style-type: none"> <li>The Constitutional Court establishes a device named after the Honorary Assembly of the Constitutional Court to monitor, examine, and recommend actions against constitutional judges suspected of violating the code of ethics and code of conduct of constitutional judges;</li> <li>Is Internal;</li> <li>Its position is ad hoc;</li> <li>The composition consists of 5 people, namely: 1 former constitutional judge, 1 legal practitioner, 2 academics who are one or both of them from legal backgrounds, 1 public figure.</li> <li>To violate the constitutional judge's code of conduct for alleged gross violations;</li> </ul>	<ul style="list-style-type: none"> <li>The Constitutional Court through PerMK No. 2 of 2014 established a Council of Ethics to maintain and uphold the honor, dignity and code of ethics of constitutional judges;</li> <li>Is External;</li> <li>His position remains;</li> <li>in violation of the constitutional judge's code of conduct for alleged misdemeanor;</li> <li>The composition is 3 people consisting of: 1 former constitutional judge; 1 professor in law; 1 public figure;</li> </ul>

Developments DKPP headed to the practice court ethics (Court of ethics) even the authority is transferred to Bawaslu District / City which can actually reduce public credibility which is increasing with the openness process practiced by DKPP in the last few years, for this reason, several articles related to the authority to violate the code of ethics committed by Election Supervisors *ad hoc* are now handled by Regency/City Bawaslu.

In essence, the existence of enforcers of the code of ethics for election organizers who according to the law use the nomenclature of the Honorary Election Organizers Council (DKPP) should be designed at least to the Regency/City level to examine and decide on violations of the code of ethics committed by organizers *ad hoc* at lower levels in order to be able to encourage credibility. implementation of democratic contestation in this country. For this reason, the author will try to design the ideal concept of an institution that enforces the code of ethics for election organizers. which will be described as follows

## 5. Institutional Aspects

### a The position of the DKPP

If you look at the enforcement of the current code of ethics for election supervisors *ad hoc* who are under the authority of Regency/City Bawaslu, it is very vulnerable to *conflict of interest* in making decisions, the institutions that are supervised and handled for the process of enforcing the code of ethics are part of the hierarchy of these institutions, while already there is an independent and permanent DKPP institution that is mandated by the Constitutional Court's decision as part of the election organizers.

With the current position of the DKPP which continues to transform into a modern ethical judiciary, it is also very important to examine the existence of ethics enforcement agencies for election administrators, especially in the regions. Therefore, it is necessary to redesign institutionally the enforcement of the code of ethics for the election supervisor *ad hoc*.

In Indonesia, there are already several professionals who practice the process of enforcing the code of ethics at the regional level, one of which is from the medical profession there is a regional MKEK to become a code of ethics enforcement agency at the provincial level and a Branch MKEK for code of ethics enforcement agencies at the Regency/City level. . As well as professional advocates, there are Regional Honorary Councils and Central Honorary Councils.

However, there is a difference between the MKEK in the medical profession and the Honorary Council in the advocate profession. For medical professionals, the decision from the branch MKEK can be appealed to the Regional MKEK, if it is handled at the beginning by the regional MKEK, the room for filing an appeal is to the central MKEK. Meanwhile, in the profession of advocate, the Regional Honorary Council is the judge at the first level, then the Central Honorary Council is the judge at the appellate level.

Based on this, to strengthen the DKPP as a modern ethics enforcement agency and contribute to improving the quality of democracy in this country while maintaining public credibility down to the level of the general election organizers at the lower level, it is necessary to form a special DKPP at the Regency/City level or the ranks of the Regency DKPP. /City on an *ad hoc* basis and separating it from their respective institutions, the Regency/Municipal DKPP is formed before the election process is carried out to examine and prosecute election organizing institutions *ad hoc*

### **b Membership Composition and Selection Mechanism**

With the institutional design of Regency/City DKPP, it is also necessary to review the composition of its membership to create institutional objectivity, especially in the process of handling violations of the code of ethics forelection organizers *ad hoc*.

If you look at the composition of the central DKPP, there are membership *ex officio* from other election organizers such as Bawaslu and KPU. For the ideal concept, it can replicate the conception of the central DKPP so that the composition of the Regency/City DKPP membership consists of 1 (one) member from the Regency/City Bawaslu, 1 (one) member from the Regency/City KPU *ex officio*, as well as 1 (one) element from the community, so that in making decisions it can produce more objective and fair decisions.

This is also in line with the Court's consideration in the Constitutional Court's decision Number 11/PUU-VIII/2010, in its consideration the Court stated that the composition of the Honorary Council members for both central and regional levels must consist of representatives of KPU members (KPU, Provincial KPU, Regency/Municipal KPU). and Bawaslu (Bawaslu, Provincial Bawaslu, Regency/City Bawaslu) in a balanced/equal number and plus one person from an independent outside party<sup>29</sup>

Regarding the recruitment process, according to Zainal Arifin Mochtar<sup>30</sup> there are 3 methods of recruitment of independent state institutions. *First*, with a model like that practiced in the Philippines, which forms a permanent team for recruitment of public positions, into a special commission to select public positions. *Second*, through the appointment model from the President, confirmation is requested from the Parliament, involving the DPR and DPD in a balanced way. *Third*, with the selection committee model for reasons of guarding against the possibility of the president being unobjective in making appointments.

There is also a recruitment model from Ramlan Surbakti and Kris Nugroho<sup>31</sup> which refers to IDEA (*Institute for Democracy and Electoral Assistance*), while the models are as follows:

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<sup>29</sup>Quoted in the consideration of the Court's Judge's Law on the decision of MK No. 11/ PPU-VIII / 2010. hal. 117

<sup>30</sup>Zainal Arifin Mochtar, Lembaga Negara Independen Dinamika Perkembangan dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi, PT. RajaGrafindo Persada: Jakarta, 2016, hal. 203-205

<sup>31</sup>Ramlan Surbakti dan Kris Nugroho, Studi tentang Desain Kelembagaan Pemilu yang Efektif, Kemitraan Partnership: Jakarta, 2015, hal. 14

- 1) Open recruitment through mass media. This selection model is carried out openly by announcing through the mass media, which is then continued by an independent team to process qualifications according to their expertise and experience related to elections. There are several countries that practice this open model, including Iraq, Namibia, and South Africa.
- 2) Appointed by the Government and submitted to Parliament. For this model different from previous models because these models are not independent for selecting the team but the Government put forward the names of candidates who are experts (*Expert*) in the areas of electoral and legal experts to Parliament for approval later. There are several countries that use this method, including Seirra Leone and Kenya, there is also a similar model that is practiced in Ukraine, only in a different way, while the path is that the Parliament proposes the names of candidates to the President (Head of State) to choose several names. Then the names chosen by the President are returned to Parliament for approval.
- 3) Recruitment and selection involves non-state institutions and legal experts. This model involves legal experts, judges, and election experts. The pattern is by conducting public consultations from experts, such as involving the Judicial Commission in Botswana and in Guatemala, the power of *civil society* is given a role to participate in determining the nomination of election organizers.
- 4) Appointment of election organizers by state/government actors. This model is called *unilateral appointment* because it only involves the role of the state. Public roles such as legal experts and forces are *civil society* not involved. This process becomes the absolute authority of the state through the Head of State. Examples of countries that practice this include India, Malaysia, Senegal, and Zambia.

From the several models above, the ideal recruitment pattern for Regency/Municipal DKPP recruitment in particular is to attract one element of the community, namely DKPP forming a selection team in each province from elements of academics, electoral experts, psychologists, and the community to then make a selection in each Regency/City openly then still involves *civil society* as an external supervisor of the recruitment implementation.

## 6. Aspects of Authority

### a Authority of the Examination Process The process of

current examination the DKPP has been transformed into an examination process that is open to the public for any violations of the code of ethics of election organizers that are handled. However, election organizers have *ad hoc* since been delegated their authority to Regency/Municipal Bawaslu, the examination will return to a closed examination.

The process of handling violations of the code of ethics for election supervisors is *ad hoc* handled through a clarification process by forming a clarification team after the clarification process is followed by a review process for alleged violations of the code of ethics which then recommends the results of the study to be discussed at the plenary meeting.

Ideally, the examination process should be carried out with an examination process similar to the judicial examination process with the principle of *audi et alteram partem* or presenting both parties for their statements to be heard in an open judicial examination process that can be accessed by the public.

This is because the open examination process is more objective and can be accessed and supervised directly by the public, Jimly Assiddiqie<sup>32</sup> emphasized that if the examination and judicial process is carried out in a closed manner, the degree of objectivity, integrity, and independence cannot be accounted for.

And so far, all cases of alleged violations of the code of ethics in various professional organizations, state institutions, government agencies, and community organizations tend to be protective, not really enforcing the code of ethics. What prevails is the culture *ewuh pekewuh*<sup>33</sup>

#### **b Follow-up to Decisions**

With the institutional design that holds DKPP at the Regency/City level, ideally there is a defense room if there is dissatisfaction with the decision at the Regency/City DKPP level. the space is part of the correction efforts that can be made by the complainant. As regulated in the regulation of ethics enforcement institutions such as the Advocate Ethics Council<sup>34</sup> and the Medical Ethics Institute in stages.

So according to the author, ideally the decision of the Regency/City DKPP is given room for correction at the appeal level at the central DKPP.

### **D. Conclusion**

1. The implementation of the authority of the Regency/City Bawaslu in handling violations of the Panwaslu code of ethics *ad hoc* has begun to be implemented in the 2019 Election, it's just that it is considered not to be effective in its implementation because there are still several factors that hinder its implementation, including the Legal Factors themselves are still lacking in synchrony or lack of coordination. harmonious arrangements relating to the implementation of the authority to handle violations of the Panwaslu code of ethics *ad hoc*. Next, from institutional factors, institutionally the authority in handling violations of the Panwaslu Code of Ethics is *ad hoc* handled by the Regency/City Bawaslu which has a hierarchical relationship institutionally with the Panwaslu *ad hoc*, and the third factor relates to the high number of violators of the Panwaslu code of ethics *ad hoc* . spread throughout Indonesia as many as 113 cases of which 102 were proven and 11 were not proven.
2. For the concept of authority, it should be from handling violations of the District Panwaslu code of ethics by designing the institutional position starting from the position, membership composition and selection mechanism. From the aspect of position, the author proposes a position design by establishing a Regency/City DKPP to handle violations of the code of ethics forelection organizers *ad hoc* which are formed on an *ad hoc basis* so that in terms of handling their position is separate from their respective institutions. From the aspect of membership composition and selection mechanism, the author proposes that the Regency/City DKPP consists of 1 (one) person from the Regency/City Bawaslu element *ex officio*, 1 (one) person from the Regency/City KPU element *ex officio*, and 1 (one) ) people from elements of society who are selected by means of DKPP form a selection team in each province by involving elements of academics, electoral experts, psychologists, and the

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<sup>32</sup> Jimly Assiddiqie, *Menggagas Peradilan Etik di Indonesia*, dalam Hermansyah Et. Al (Menggagas Peradilan Etik di Indonesia), Sekretariat Jenderal Komisi Yudisial: Jakarta. 2015, hal. 18

<sup>33</sup> Ibid. hal. 19

<sup>34</sup> Can be seen in Article 21 paragraph (1) of the Decision of the National Leadership Council of the Indonesian Advocates Association Number 02 of 2007

community. Meanwhile, for the aspect of authority, there are several things that need to be designed, namely the aspect of the authority of an open examination process by examining both parties based on the principle of *audi et alteram partem*. Then, for the design of the follow-up to the decision of the Regency/City DKPP, space is given for an appeal process at the central DKPP level.

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