



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 32/PUU-XIX/2021

Concerning

Final and Binding Nature of Decisions of the Election Organizer Ethics Council

- Petitioner** : Evi Novida Ginting Manik and Arief Budiman
- Type of Case** : Examination of Law Number 7 of 2017 concerning General Election (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject matter** : The unclear meaning of the final and binding nature of Decision of the of the Election Organizer Ethics Council (DKPP) in Article 458 paragraph (13) of Law 7/2017 is in contrary to the principle of the rule of law as regulated in Article 1 paragraph (3), the principle of direct, general, free, confidential, honest and fair elections as regulated in Article 22E paragraph (1), the independence of election organizers as regulated in Article 22E paragraph (5), guarantee of legal equality as regulated in Article 27 paragraph (1), guarantee of legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution;
- Verdict** : 1. To grant the Petitioners' petition in part;
2. To declare that the provision of Article 458 paragraph (13) of Law Number 7 of 2017 (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as it is not interpreted as, "The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu and is a decision of a TUN (state administration) official that is concrete, individual and final, which can be the object of a lawsuit in a state administration court";
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioners' petition for the remainder.
- Date of Decision** : Tuesday, March 29, 2022.
- Overview of Decision** :

The Petitioners argue that their legal status qualifications as Indonesian citizens (WNI) currently carrying out their duties as members of the General Election Commission of the Republic of Indonesia (*Komisi Pemilihan Umum Republik Indonesia* or KPU RI) for the 2017-2022 period is in accordance with Presidential Decree Number 43/P of 2017 concerning Dismissal and Appointment of Members of the General Election Commission for the 2017 – 2022 Period;

Regarding the authority of the Court, because of the petition aims to examine the constitutionality of legal norms, *in casu* Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the petition of the Petitioners;

Regarding the legal standing of the Petitioners, the Court is of the opinion that their qualifications as individual Indonesian citizens who are members of the KPU RI and have been dismissed from their positions based on the Decision of the DKPP, the Petitioners have been able to explain specifically the loss of their constitutional rights which, according to the Petitioners' opinion, has occurred. Petitioner I and Petitioner II are legal subjects in a lawsuit or report to the DKPP whose decisions, according to the Petitioners, have prejudiced the Petitioners. The phrase "final and binding" in Article 458 paragraph (13) of Law 7/2017 has been interpreted by DKPP that its decision cannot be reviewed by the judiciary. This has resulted in the DKPP as of its decision, no longer considers the Petitioners as members of the KPU RI even though the Decision of the State Administrative Court has been made. Therefore, the Petitioners have been able to describe a causal relationship (causality) between the Petitioners' perceived constitutional loss/potential loss and the petition to review the norm, so that if the petition is granted, such loss will no longer occur. Therefore, based on these considerations, regardless of whether or not the arguments of the Petitioners' petition regarding the unconstitutionality of the legal norms petitioned for review are proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Regarding the subject matter of the Petitioners' petition, the Court considers based on the Decision of the Constitutional Court Number 31/PUU-XI/2013, dated April 3, 2014, which examines Article 112 paragraph (12) of Law Number 15 of 2011 concerning General Elections, the *a quo* norm stipulates that the decision of the DKPP is final and binding. Then the legislators declared that Law 15/2012 did not apply with the enactment of Law 7/2017, but still maintained the final and binding nature of the DKPP Decision as regulated in Article 458 paragraph (13) of Law 7/2017 which was petitioned for review in the *a quo* case. The Court is of the opinion that Article 458 paragraph (13) of Law 7/2017 which regulates the same norms as Article 112 paragraph (12) of Law 15/2012 and the constitutional issues questioned by the Petitioners of Case Number 31/PUU-XI/2013 are the same as those questioned by the Petitioners of the *a quo* Case, then the norms regarding the DKPP decision which are final and binding have been considered by the Court in the Decision of the Constitutional Court Number 31/PUU-XI/2013, therefore according to the Court the subject matter of Petitioners is related to the Decision of the Constitutional Court Number 31/PUU-XI/2013. Meanwhile, the remaining arguments of the Petitioners as long as they are still relevant to the substance of the legal considerations which will be further elaborated by the Court will also be considered further.

Whereas the Court considers the legal uncertainty that occurs at the level of implementing norms, which turn out to have different interpretations that are not in line with the intent of the Decision of the Constitutional Court Number 31/PUU-XI/2013. In this regard, after careful considerations, there are several different perception in understanding the Decision of the Constitutional Court. Because, in understanding the decisions of the judiciary body, including the decisions of the Court, it cannot be separated between the decisions and legal considerations as *ratio decidendi*. The same applies with the Decision of the Constitutional Court Number 31/PUU-XI/2013, what is meant by the Court is as will be confirmed by the Court in legal considerations and then stated in the *a quo* decision.

Whereas the Court with its legal considerations in Decision Number 31/PUU-XI/2013 has stated that the phrase "final and binding" must be interpreted as final and binding for the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu, which should be read as combined with the legal considerations which state, "is a decision of a TUN (state administration) official that is concrete, individual and final, which can be the object of a lawsuit in a state administration court".

Whereas the Court reaffirms its position that DKPP is not a judicial body and DKPP as well as KPU and Bawaslu have the same, equal positions and none of them has a superior position. Therefore, through the *a quo* decision, the Court affirms and reminds all stakeholders that the phrase "final and binding" in Article 458 paragraph (13) of Law 7/2017 is intended to

bind the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu and is a decision of a TUN (state administration) official that is concrete, individual and final, which can be the object of a lawsuit in a state administration court.

Whereas the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu must implement the DKPP Decision and any decisions issued by any institutions following up on the DKPP decision can be used as objects of lawsuits by any parties who do not accept the DKPP decision, by filing a lawsuit to the state administration court. . Therefore, the state administration court decisions which already have a binding legal force must still be obeyed and shall become the decisions of the judiciary body that have executorial power. In other words, what is meant by final and binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu is that the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu shall only follow up on DKPP decisions whose products can be the object of a lawsuit at the state administration court. Therefore, in this context, the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu as direct superiors who have the authority to appoint and dismiss the election organizers according to their level, do not have the authority to hold different opinions that are in contrary to the DKPP Decision or the State Administration Decision that corrects or strengthen the DKPP Decision.

Whereas based on the aforementioned legal considerations, the Court is of the opinion that the Petitioners' petition is related to whether or not the DKPP decision can become the object of a lawsuit at of the State Administration Court, as long as it is in line with the legal considerations of the *a quo* Decision, it is legally justifiable. Meanwhile, through the *a quo* decision, the Court reaffirms in the verdicts of the *a quo* case, that the nature of the legal considerations of the case decision Number 31/PUU-XI/2013 regarding the interpretation of Article 458 paragraph (13) of Law 7/2017 which subsequently must be a single interpretation that cannot be interpreted other than as stated in the *a quo* decision. Therefore, the Court is of the opinion that the arguments of the Petitioners are legally justifiable in part. Meanwhile, the arguments and other matters shall not be considered because they are deemed irrelevant and therefore must be declared as legally unjustifiable.

Accordingly, the Court subsequently issued a decision with the verdicts as follows:

1. To grant the Petitioners' petition in part;
2. To declare that the provision of Article 458 paragraph (13) of Law Number 7 of 2017 (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force as long as it is not interpreted as, "The decision as referred to in paragraph (10) is binding on the President, KPU, Provincial KPU, Regency/Municipal KPU, and Bawaslu and is a decision of a TUN (state administration) official that is concrete, individual and final, which can be the object of a lawsuit in a state administration court";
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioners' petition for the remainder.