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FACTUAL ACTIONS ON DKPP ETHICAL DECISION RESULTS AS OBJECTS OF EXAMINATION BY THE STATE ADMINISTRATIVE COURT

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ABSTRACT

The Election Organizer Ethics (DKPP)'s Decision in adjudicating Election administrator ethical disputes is final and binding. This raises a problem, that is, if the DKPP decides an ethical dispute deviates from legal provisions, then there is no way to test it. Thus, the author intends to analyze comprehensively regarding, **First**, the final and binding nature of the results of the election administrator ethics trial from the perspective of state administrative law. **Second**, determine the exact form of DKPP authority as the object of testing the authority of the State Administrative Court. This paper uses normative legal research methods and regulatory approaches. There are two conclusions. **First**, the DKPP decision, which has an ethical dimension, is only binding on the enforcement of the code of ethics, while the implementation of DKPP authority is non-binding and becomes the object of the Administrative Court. **Second,** in testing DKPP authority at the State Administrative Court, the touchstone used is the conformity of the ethics trial procedure by DKPP, without including the DKPP Ethics Decision as the object of the lawsuit. This is in accordance with the current government administration legal regime which includes Factual Actions including the exercise of DKPP authority.

Keywords: factual action; testing; ethical judgment

1. INTRODUCTION

The development of administrative law in following the course of authorities of government institutions has undergone several adjustments. One of them is the presence of a new government administration action outside of the State Administrative Decisions (*Keputusan Tata Usaha Negara* 'KTUN') are in the form of written decisions, namely Real or Factual Actions from Government activities that have a material dimension and are aligned and aligned similar to the State Administrative Court Decisions. Enrico Simanjuntak using the Ratio Legis of Article 87 in conjunction with Article 75 and Article 76 of Law Number 30 of 2014 concerning Government Administration (Government Administration Law) confirms that Real or Factual Government Actions with a material dimension can also be interpreted as part of government administration actions because the Law on Government Administration contains the main idea that every citizen who disagrees with the Written Decree and/or actions/activities of the Government, can carry out administrative resistance through the leadership/superior of the official concerned and submit it to the Court.[1]

The development of this model of authority is inseparable from the authority of the Election Administrator Honorary Board (*Dewan Kehormatan Penyelenggara Pemilu* 'DKPP') in adjudicating election administrator

1 Enrico Simanjuntak, "Restatement Tentang Yuridiksi Peradlian Mengenai Perbuatan Melawan Hukum Pemerintah," *Jurnal Hukum Peratun* Vol. 2, No. 2 (2019): 183-184 Menurut Enrico, pandangan para pakar hukum administrasi negara mengenai tindakan administrasi pemerintahan hanya mencakup KTUN Tertulis atau Tindakan Administrasi pemerintahan yang berasal dari wewenang (delegasi, mandat, dan atribusi). Para pakar tersebut tidak menerima pandangan tindakan faktual pemerintahan sebagai bagian dari tindakan adminsitrasi pemerintahan, karena tindakan faktual dari pemerintahan dapat berdimensi privat. Namun, yang ditekankan oleh Enrico dalam memaknai tindakan faktual dengan rasio legis UU Administrasi Pemerintahan adalah dengan melihat bahwa tindakan tersebut berada dalam wilayah publik atau fungsi-fungsi yang berorientasi pada hukum publik

ethical issues and its authority interpreted in public disputes because it relates to the professional code of ethics of the public office of election administrator who have a public dimension. However, in practice, the DKPP authorities in deciding on a code of ethics are very different from the authority of government administration institutions which have a legal dimension in general, because the DKPP Decision which has the dimension of an Ethical Decision is not State Administrative Court Decision. The implication is that this is packaged in a legal format in casu Presidential Decree, Central, Provincial, Regency, and/or City KPU Decisions. Therefore, no effort can be made to appeal the decision of the ethics trial when the DKPP has decided because the decision is final and binding and the President is obliged to comply with the decision of the ethics trial.[2]

This context has provoked discourse regarding the DKPP authorities and in practice, the DKPP authorities have experienced problems when deciding on an ethics trial against a member of the General Elections Commission (*Komisi Pemilihan Umum* 'KPU'), Evi Novida Ginting (referred to as the Reported Party). Evi Novida Ginting is a former KPU member who was permanently dismissed because she was deemed to have violated the election organizer's cofe of ethics. Based on the results of DKPP Decision No 317-PKE-DKPP/X/2019 (referred to as the DKPP Decision No 317 of 2019) which dismissed the Reported Party and formulated in the legal formulation of Presidential Decree Number 34/P of 2020 (referred to as the Presidential Decree 34 of 2020), the Reported Party has taken legal action to review the Presidential Decree quo to the Administrative Court. As a result, the Jakarta State Administrative Court Decision Number 82/G/2020/PTUN-JKT (referred to as the Jakarta State Administrative Court Decision No 82 of 2020) annulled the a quo Presidential Decree and ordered the Defendant (reported) to be reinstated as a KPU member.[3] As a follow-up to the Jakarta State Administrative Court Decision No 82 of 2020, the President issued Presidential Decree No 83/P of 2020 (referred to as the Presidential Decree 83 of 2020) which confirmed the revocation of Presidential Decree No 34 of 2020 and submitted it to the KPU accompanied by the reinstatement of the reported party as a member of the KPU by the Chairperson of the KPU. However, in understanding the follow-up to Presidential Decree No 83 of 2020 on the State Administrative Court Decision, DKPP continued to state that the Reported Party could not be active again as a member of the KPU. According to DKPP, its authority in adjudicating ethics trials is final and binding, even though the State Administrative Court has decided and ordered to rehabilitate and reinstate the position of the Reported Party.

The final and binding nature of decisions based on the DKPP authorities is essential because they have held non-legal ethics trials and do not have an exact measure like a legal certainty therefore, this matter cannot be reviewed by the State Administrative Court. However, in the paradigm of state administration law, especially in the context of the authority of government institutions which currently regulate the Factual Actions, the government administrative actions are not only limited to legal documents in the form of administrative decisions but look at the procedures for implementing this authority factually in casu DKPP in the context of ethics trials. This is mainly because the DKPP authorities come attributively from the Election Law and have a public dimension. Therefore, this context places the existing problems diametrically, which is to examine academically and juridically the DKPP authorities to decide on the results of ethical trials with the perspective of state administrative law, especially with the development of factual actions as part of the current state administrative law regime in Indonesia.

Based on the previous description, the formulation of the problem is concluded with several questions. First, what is the position of the DKPP's ethical decision to hold an election management ethics trial from the perspective of contemporary state administrative law in Indonesia? Second, can the DKPP decisions that are final and binding be tested and become the object of testing the authority of the State Administrative Court? Therefore, based on the formulation of these problems, it is necessary to provide a clear demarcation line between the authority to decide on ethical trials and the results of ethical trials which are final and binding by the DKPP as a means of supervising each state institution by the judiciary, especially the State Administrative Court.

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2 Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 31/PUU-XI/2013: 75. Hal tersebut diperkuat dengan Putusan Mahkamah Konstitusi Nomor 31/PUU-XI/2013 (Yurisprudensi MK) yang secara konstituional menyatakan bahwa Putusan Etik DKPP bersifat final dan mengikat bagi Presiden, KPU, KPUD, Bawaslu dan Bawaslu Daerah

3 Pengadilan Tata Usaha Negara Jakarta Selatan, Putusan Nomor 82/G/2020/PTUN-JKT: 264.

This study aims to produce a novelty by comparing it with three previous studies to provide legal certainty regarding the DKPP authorities in deciding ethical disputes for election administrators as follows:

1. Zulkifli Aspan and Wiwin Suwandi with title "Analisis Final dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilihan Umum".[4]
2. Ismail and Fakhris Lutfianto Hapsoro with title "Paradigma Final dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilu".[5]
3. Enrico Simanjuntak with title "Restatement Tentang Yuridiksi Peradilan Mengadili Perbuatan Melawan Hukum Pemerintah".[6]
4. Titi Anggraini with title "Telaah Hukum atas Putusan DKPP Nomor 317-PKE-DKPP/X/2019".[7]

In the first and second research, there is an overview that the DKPP authorities in casu DKPP Decisions in adjudicating ethics are final and binding without any legal action against State Administrative Court. This is because the DKPP authorities adjudicate ethics has an ethical enforcement dimension (not legal) and if the legal remedy is granted, it will eliminate the DKPP's role in adjudicating ethics which causes the certainty and orderliness of election administrator to be disrupted.

In the third research, it can be concluded that currently, the legal regime of state administration concerning the Law on Government Administration has adopted Actual or Factual Actions as the genus of State Administrative Court Decision. Thus, the State Administrative Court Decision is not only understood in absolute terms as a written decision like a DKPP decision but the procedures for exercising this authority are interpreted as factual actions. Whereas in the fourth research or monograph, it has an overview that the DKPP cannot decide ethical disputes that have a legal dimension, especially in interpreting whether the KPU's decision is in accordance with the Constitutional Court's decision, because this authority is the jurisdiction of the legal court.

Regarding the first and second research overviews, this study aims to deconstruct the understanding of the DKPP Decision as final and binding which is reviewed not from the Ethical Decision but the procedures and the eprocedures for exercising the authority of an ethics trial, by emphasizing that the exercise of DKPP authority in deciding ethical dispute is an authority regulated in the public law through the Election Law and has legal consequences. So that the authority exercised in the dimension of public law can be tested at the State Administrative Court (*Peradilan Tata Usaha Negara* 'PTUN').

Regarding the third research overview, the understanding of the factual action regime of government administration in Indonesia is used, as a basis for interpreting DKPP authority which cannot be tested through its Decisions which are final and binding on legal courts. However, by factually examining his actions (procedures) in deciding ethical disputes that have a public legal dimension and the suitability of the exercise of authority based on national laws and regulations. As for the fourth research or monograph, the DKPP Ethical Decision which is final and binding can experience ultra vires in practice. So that the DKPP which is a public institution in the flow of public law, even though its decision cannot be tested, the authority procedures carried out need to be supervised by the State Administrative Court so that it is in accordance with the mandate of the Election Law.

Based on the description of the state-of-the-art overview in previous research, what underlies this research to give birth to an idea or novelty, namely interpreting the procedures for DKPP authority which is public law, as part of Government Administration Factual Action which is a genus of State Administrative Court Decision and is the object of State Administrative Court testing. Thus, the DKPP Ethical Decision basically remains

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4 Zulkifli Aspan and Wiwin Suwandi, "Analisis Final Dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilihan Umum," *Jurnal APHTN-HAN* 1, no. 1 (2022), https://doi.org/10.55292/japhtnhan.v1i1.28: 92-104

5 Ismail and Fakhris Lutfianto Hasporo, "Paradigma Makna Final Dan Mengikat Putusan Dewan Kehormatan Penyelenggara Pemilu," *Justitia Et Pax* 37, no. 2 (2021), https://doi.org/10.24002/jep.v37i2.4312: 235-250

6 Enrico Simanjuntak, "Restatement Tentang Yuridiksi Peradlian Mengenai Perbuatan Melawan Hukum Pemerintah," *Jurnal Hukum Peratun* 2, no. 2 (Desember 3, 2019): 183–84..

7 Titi Anggraini, "Telaah Hukum Atas Putusan DKPP Nomor 317-PKE-DKPP/X/2019," JDIH KPU, 2020, https://jdih.kpu.go.id/detailmonografi-6c4d54586330516c4d3051253344.

final and binding. However, when the procedures for carrying out the ethical judicial authorities violate the applicable procedures or national laws and regulations, then the legal action can be submitted to the State Administrative Court by making the object of factual action the object of a lawsuit.

This paper discusses Factual Actions in Government Administrative Actions, the Development of Absolute Competence of the State Administrative Court, the Authority of the Ethics Committee for Election Administrator, DKPP Decision in the Rules of State Administrative Law, and the Implementation of DKPP Authority as a Form of Factual Action and Object of State Administrative Lawsuit

2. METHOD

This paper uses the method of normative legal research. Normative legal research is a synthesis and description of the applicable legal norms regarding certain legal classifications, elaborating causa verband between laws and problems as well as conceptualizing ideas that are useful in society.[8] Another term from normative legal research can also be interpreted as black-letter research or doctrinal research which covers only law as a science that stands alone and is traced through legal writings, regulations, and is accompanied by other scientific disciplines.[9] The black-letter legal research at least aims to structure, improve, and clarify a state regulation relating to a particular topic through a typical analysis of authoritative texts, both primary and secondary.[10] The approach used in this paper is the statute approach. This approach is to carry out a review of related laws and regulations (referred to as statutory regulations) to be used as a source of foothold.[11] Another approach used is the theoretical or conceptual approach. This approach is based on the thoughts of legal experts and legal doctrines and does not refer to the applicable national statutory regulations. The legal materials used are Primary Legal Materials and Secondary Legal Materials. Primary legal material in the form of national statutory regulations, legal texts, and decisions of judicial bodies. Secondary law material can be in the form of scientific literature, books, journals, articles, research reports, official state documents, or scientific opinions related to the subject of this research.

3. FINDINGS AND DISCUSSION

3.1 Factual Action in Government Administration Action

One of the main characteristics of a modern rule of law is that there are restrictions on the authorities in the use of state instruments.[12] So that the government can only take action based on statutory regulations, therefore the government's authority in taking action can be said being limited.[13] In the principles of government implementation, basically, there is a classification of government action which is divided into two models, namely government legal action or activity (*recht handeling*) and factual government action or activity (*feitelijke handeling*).[14] Government factual action (*feitelijke handeling*) is an action taken by the government that not classified as legal action. These actions are limited only to meet the needs of the community.[15] Government factual action (feitelijke handeling) is an action taken by the government that not classified as legal action.

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8 Peter Mahmud Marzuki, *Penelitian Hukum*, *Jurnal Penelitian Hukum* (Jakarta: Prenadamedia Group, 2019): 32

9 Muhammad Helmy Hakim, "Pergeseran Orientasi Penelitian Hukum: Dari Doktrinal Ke Sosio-Legal," *Syariah Jurnal Hukum Dan Pemikiran* 16, no. 2 (2017), https://dx.doi.org/10.18592/sy.v16i2.1031: 105

10 Mike McConville and Wing Hong Chui, *Introduction and Overview," in Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007): 4

11 M. Syamsudin, *Operasionalisasi Penelitian Hukum* (Jakarta: Rajawali Pers, 2007): 58

12 Philipus M. Hadjon et al., *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gajahmada University Press, 1997):151- 178 Instrumen negara menurut Philipus M Hadjon yakni (1). Peraturan perundang-undangan (*algemeen verbindende voorschriften*); (2) Peraturan kebijakan (*beleidregel, policy rules*), (3). Rencana (*het plan*).

13 Slamet Suharotno and Syofyan Hadi, *Tentang Keputusan Pemerintah* (Surabaya: R. A. De. Rozarie, 2018): 8

14 Muhammad Adiguna BimasaktI, "Onrechtmatig Overheidsdaad Oleh Pemerintah Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan / Act Against the Law By the Government From the View Point of the Law of Government Administration," *Jurnal Hukum Peratun* 1, no. 2 (2018), https://doi.org/10.25216/peratun.122018: 270

15 Yopie Morya Immanuel Patiro, *Diskresi Pejabat Publik Dan Tindak Pidana Korupsi* (Bandung: Keni Media, 2012): 105-106

These actions are limited only to meet the needs of the community.

Meanwhile, government legal action (*recht handeling*) is a government action that is classified as legal action. This action is within the realm of public law which is intended to have legal consequences. The legal consequences that arise can be in the form of rights and/or obligations. Legal action is divided into two forms, namely civil or private legal action or activity and public legal action or activity.[16] Private law action or activity requires the State represented by the government to act as a subject or legal entity. The state through the government can carry out private legal action or activity and the government acts as a private legal entity. In this case, it is like making a joint agreement or consensus which is regulated through Article 1320 of the Civil Code.[17]

Public legal action is different from private action which has a civil dimension. Public law action does not require agreement with other non-governmental parties, even though the action will have an impact on other people.[18] Therefore, in public legal action, it is often stated that the government's position with the affected party is not equal. The action of this kind is classified as government action in terms of one/one party (*eenzijdig publiek recht handeling*).[19] The government's action is in the form of beschiking or decrees, which are individual, final, and concrete.[20] Manifestations of these provisions are in the form of granting or revoking licenses, appointments, dismissals, transfers, and promotions of civil servants.

According to Meinhard Schroder, factual action is indeed classified as a non-government legal instrument, but it cannot be separated from the inherent framework of implementing government authority in carrying out public law functions.[21] Therefore, factual action must be in line with existing legal rules, norms, and values. So mutatis mutandis, factual action that harms the community because they are not following the rule of law, norms, and values, the community can file a compensation claim.[22] Factual action is not only in the form of active action but can also be in the form of a passive action, such as allowing community rights to be violated.

According to Enrico, often factual actions are not interpreted as a form of non-legal action or only limited to material action, because the classical understanding of state administrative law relies only on letters or written decisions (schriftelijke beslissingen). Thus, the development of contemporary administrative law, according to him, also includes factual action or material action and demands the role of the Court to be more just to realize various interfaces between the Government and the population that are not in line but remain within national and/or state entity.[23] Therefore, according to Enrico, today's factual action, especially in the framework of administrative law, should be seen from the perspective of optimizing the strengthening of the public law regime to exercise juridical control over the Government with an orientation towards realizing legal protection for citizens.[24]

3.2 Development of State Administrative Court Absolute Competence

The main orientation of the birth of the concept of the Administrative Court is to monitor and reduce the possibility of abuse of power and abuse of power from government actions and decisions.[25] With administrative

16 Ridwan, "Beberapa Catatan Tentang Peradilan Tata Usaha Negara," *Jurnal Hukum* 9, no. 20 (2002), https://doi.org/10.20885/iustum.vol9.iss20.art6: 71

17 I Nyoman Gede Remaja, *Hukum Administrasi Negara* (Bali: Fakultas Hukum Universitas Panji Sakti, 2017): 27

18 S.F. Marbun, *Hukum Adminsitrasi Negara I* (Yogyakarta: FH UII Press, 2012): 45

19 Muhamad Raziv Barokah, *Pergeseran Kompetensi Absolut Dari Peradilan Umum Ke Peradilan Tata Usaha Negara :Gugatan Perbuatan Melawan Hukum Oleh Penguasa (Onrechtmatige Overheidsdaad)* (Jakarta: Universitas Indonesia, 2020): 40

20 E. Utrecht, *Pengantar Hukum Administrasi Indonesia* (Jakarta: Balai Buku Bachtiar, 1962): 97

21 Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Sinar Grafika, 2018): 121

22 Slamet Suhartono and Sofyan Hadi, *Tentang Keputusan Pemerintah* (Surabaya: R.A.De.Rozarie, 2018): 8

23 Simanjuntak, "Restatement Tentang Yuridiksi Peradlian Mengenai Perbuatan Melawan Hukum Pemerintah.": 184

24 Enrico Simanjuntak, "Restatement Tentang Yuridiksi Peradlian Mengenai Perbuatan Melawan Hukum Pemerintah," *Jurnal Hukum Peratun* 2, no. 2 (Desember 3, 2019): 32-48.

25 Ridwan HR, Despan Heryansyah, and Dian Kus Pratiwi, "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 350

justice, it is hoped that government actions and decisions can guarantee the rights of every citizen.[26] This is because the emphasis point of state administrative law is legal protection for the community based on justice, truth, order, and legal certainty from the actions and decisions of the state.[27] So that administrative justice is considered as judicial control to create government authority that is in accordance with corridors and does not exceed the limits (*ultra vires*).[28]

Based on this circumstance, the State Administrative Court was formed to resolve disputes fairly (ex aequo et bono) between the government and its citizens in accordance with applicable procedures. The presence of the State Administrative Court in Indonesia also confirms that the State fully supports the resolution of disputes over the rights of citizens and upholds the values of a rule of law, namely legal certainty, justice, and human rights.[29] In its implementation, State Administrative Court refers to the Law on Government Administration as a source of material law, and Law Number 5 of 1986 concerning the State Administrative Court and its amendments (referred to as the State Administrative Court Law) as a source of procedural law. The Government Administration Law regulates authority and responsibility, decisions, the discretion of Government Officials and administrative efforts as well as administrative and other sanctions.

In the Government Administration Law, there is an expansion of the absolute authority of the State Administrative Court, namely that it can assess and decide on irregularities in authority over decisions or decrees and/or actions of State Administrative Officials.[30] Abuse of authority itself is defined by Philipus M Hadjon, as an improper use of authority. Furthermore, according to Philipus, the benchmark for abuse of authority is proven to be real, if officials take advantage of the authority granted for a different orientation than that which has been determined.[31] Apart from that, the procedural law for abuse of authority is also regulated in Supreme Court Regulation (Perma) No. 4 of 2015 concerning procedures for assessing aspects of abuse of authority. As for the aspect of deviation of authority regulated in the State Administrative Court Law and the Government Administration Law, namely actions or decrees/decisions made and issued by the Government that is not in accordance with authority. The further explanation Is:

1. Government Officials or Agencies exceed their authority if:
    a. State Administrative Court Decisions that have been made or carried out have passed the term of office or the validity of an authority;
    b. Exceeds the jurisdictional limit of authority;
    c. Contradictory with the provisions of national statutory regulations.
2. Government Officials or Agencies combine or mix powers if:
    a. Apart from the main tasks, functions, and authorities that have been given;
    b. Contradictory with the main tasks, functions, and authorities that have been given
3. Government Officials or Agencies act recklessly in exercising their authority if:
    a. Not have a basis on the authority possessed;
    b. Not in accordance with the Decision of the Judicial Body.

The object of dispute in the State Administrative Court has also been expanded since the promulgation of the Government Administration Law because it regulates the absolute competence of the State Administrative

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26 Baharuddin Lopa, Andi Hamzah, and Niniek Suparni, *Peradilan Tata Usaha Negara* (Jakarta: Sinar Grafika, 2011): 36

27 Supandi, *Hukum Peradilan Tata Usaha Negara* (Medan: Penerbit Pustaka Bangsa Pers, 2011): 76

28 Anna Erliyana, *Keputusan Presiden (Analisis Keppres RI 1987-1998)* (Jakarta: Program Pascasarjana FH UI, 2005): 11

29 Titik Triwulan and Gunadi Widodo, *Hukum Tata Usaha Negara Dan Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: Prenadamedia Group, 2016): 566

30 Ridwan HR, Despan Heryansyah, SHI., MH., and Dian Kus Pratiwi, SH., MH., "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 350, https://doi.org/10.20885/iustum.vol25.iss2.art7: 350

31 Philipus M. Hadjon et al., *Hukum Administrasi Dan Tindak Pidana Korupsi* (Yogyakarta: Gadjah Mada University Press, 2011): 22

Court. One of them is contained in Article 87 of the Government Administration Law which defines factual action as government administration action. The competency of the State Administrative Court in adjudicating factual action in the Government Administration Law was also clarified by the issuance of Supreme Court Regulation Number 2 of 2019 concerning procedures for resolving disputes over Government Action and Authority in adjudicating Unlawful Acts by Government Officials and/or Agency (PMHP). It states that acts against the law in the form of factual action by a Government Official and/or Agency are the jurisdiction of the State Administrative Judicial Body, in this case with its authority to adjudicate disputes over government action or activity after taking administrative measures as stipulated in the Government Administration Law, if not contained in the national statutory regulations. The lawsuit is submitted in writing to the court if the governmen''s action is contradictory to the national statutory regulations and good governance.

In practice, there has been government factual actions that have been sued at the Administrative Court and have resulted in the acceptance and granting of the lawsuit by the Administrative Court as a form of PMHP. One of them is the lawsuit filed by the Alliance of Independent Journalists and Defenders of Freedom of Expression of Southeast Asia (SAFEnet) against the State in casu the Government cq the Minister of Communication and Information Technology due to Unlawful Acts (Onrechmatige Overheidsdaad), namely acts of slowing access/bandwidth and freezing of internet services in the month August-September 2019 in the West Papua and Papua areas due to riots in the region. In the Jakarta Administrative Court Decision No 82 of 2020, the Minister of Communication and Informatics slowed internet access factually as indicated by the News/Press Release No 154/HM/KOMINFO/08/2019 without a written policy followed by blocking cellular telecommunication data services (internet blocking).[32]

The judge's considerations in the a quo decision stated that the act of slowing down and terminating internet access which was carried out factually by the Minister of Communication and Informatics was not preceded by an announcement of a dangerous situation by the President as a form of implementation of Perppu Regulation No. 23 of 1959 concerning a Dangerous Situation to deal with riots so that according to the judge, this factual action deviated from national statutory regulations and simplification referred to as an unlawful act by Government Official and/or Agency.[33]

3.3 Authority of the Election Administrator Honorary Board

DKPP is an institution that is regulated by Law Number 7 of 2017 concerning Elections (Election Law) as one of the Election institutions to support Election implementing resources by both the KPU and Bawaslu. Juridically, as constructed in Article 1 point 24 of the Election Law, the DKPP, which is an election management body, has the authority to handle and prosecute deviations from the code of ethics for election officials. The authority of the DKPP is outlined juridically through Article 156 paragraph 1 of the Election Law to receive a report or allegation of indications of irregularities in the code of ethics of election implementers and to carry out investigations, substantiation, and examination of such reports or allegations.

The DKPP with its authority can summon defendants for violating the code of ethics to provide clarification and defense and can impose ethical penalties on Election Administrator if they are proven to have deviated from the code of ethics according to the evidence presented by the complainant or reporter, witnesses or other parties involved. Such authority also provides flexibility for the DKPP, to be able to decide and impose ethical sanctions on a report of a violation of the code of ethics or vice versa, deciding that there is no ethical violation against the defendant is the authority of the DKPP as written in Article 159 paragraph 2 of the Election Law. When deciding on alleged deviations from the code of ethics by the Election Administrator, it is mandatory to summon the reporter to request information, including documents or other supporting evidence.

In practice, the DKPP formed an ethics court (ethical institution) to try ethical violations by Election Administrator. In this case, it is constructed as an ethical court whose decision product is final or final and permanent (without legal action) and tends to be different from judicial institutions which have levels of justice and can apply for a legal remedy. This is caused by the object of dispute from DKPP, namely ethical violations, and is a special domain of the rule of ethics and the decision product issued is an Ethical Decision and not a

32 Pengadilan Tata Usaha Negara Jakarta Selatan, "Putusan Nomor 82/G/2020/PTUN-JKT": 250

33 Pengadilan Tata Usaha Negara Jakarta Selatan: 264-273

law. So that there is no judicial institution that can intervene or influence the process of implementing DKPP decisions because the domain of the judicial institution is legal decisions and vice versa.[34]

This was constitutionally affirmed through Constitutional Court Decision No. 31/PUU-XII/2013 (referred to as the Constitutional Court Jurisprudence) which was the result of the Judicial Review process on the DKPP framework when DKPP was still referring to Law No. 15 of 2011. The Court stated that the nature of final, or final and permanent or binding DKPP decisions must be defined as final and permanent/binding for the President, KPU, and KPUD, as well as Bawaslu and Regional Bawaslu in implementing DKPP decisions.[35] This final and binding nature is interpreted as having a decision (beschikking) from the intended institution without changing the content of the Ethical Decision, to be packaged according to legal norms so that in practice, the DKPP ethical decision can be implemented directly.

3.4 DKPP Decision in the Rules of State Administrative Law

The DKPP's decision is essentially a decision that has the dimension of ethical norms and cannot be subject to a review or other legal remedy so it is final and binding for the Election Administrator when decided by the DKPP. This was even confirmed through the Constitutional Court Jurisprudence which held definitively that the nature of final and binding/permanent DKPP decisions with an ethical dimension, must be binding on the President, KPU, and KPUD as well as Bawaslu and Regional Bawaslu. The conceptualization of final and final nature, citing Jimly Asshiddiqie's opinion, comes from the paradigm that ethics is a branch of philosophy that broadly discusses the goodness (not certainty) or badness of human behavior. According to Jimly, one of the branch systems of ethical philosophy is reflected in the existence of Descriptive Ethics that contains an ethic that correlates with the way of good and right behavior as other people think.[36] Therefore, in the system for proving Ethical Violations of Election Administrator, conceptually it refers to the ethical standards and preferences of each ethics enforcement officer who is at the DKPP, so that such preferences cannot be contested again and are final.

One of the problems with the implementation of DKPP authority was when the process of dismissing one of the KPU members, Evi Novida Ginting, was based on DKPP Decision No 317 of 2019. Dismissal as a sanction was applied because Evi, as a member of the KPU, was responsible for dealing with the Determination and Documentation of Election Results (KPU Decisions), has a difference in decision with the Indonesia Bawaslu to follow up the Constitutional Court Jurisprudence regarding the results of the general dispute vote of the West Kalimantan Provincial DPRD.[37]

In short, one of the eligible participants for the election of members of the West Kalimantan Provincial DPRD, Hendri Makaluasc, who did not accept the RI and West Kalimantan KPU's determination regarding the PHPU vote results which had been decided by the Constitutional Court Decision to be followed up, filed a lawsuit with Bawaslu and the lawsuit was granted by Bawaslu. However, because the Indonesia KPU and West Kalimantan persisted in their stipulation to follow up on the Constitutional Court decision without following the results of the Bawaslu decision, Hendri MakaLUSc filed an ethical dispute against members of the RI and West Kalimantan KPU to the DKPP. One of the results of the DKPP's final decision was to dismiss Evi Novida Ginting as a member of the KPU.

Differences in follow-up on the Jurisprudence Constitutional Court by KPU Decision and Bawaslu Decision basically are areas of legal disputes and not ethical norms, because the Decision issued by KPU is a legal product and jurisdiction from State Administrative Court, to correct the substance of KPU Decision whether

34 Widodo Dwi Putro, *"Hukum Dan Moral Dalam Perspektif Filsafat Hukum," in Menggagas Peradilan Etik Di Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2015): 75

35 Mahkamah Konstitusi dalam memberikan pertimbangan bahwa finalnya Putusan DKPP sebagai putusan etik yang wajib dipatuhi oleh penyelenggara Pemilu menegaskan, bahwa DKPP ialah lembaga yang diberi kewenangan oleh undang-undang guna sebagai perangkat internal penyelenggara pemilu. Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 31/PUU-XI/2013: 73-75

36 Jimly Asshiddiqie, "Menggagas Peradilan Etik Di Indonesia," in *Menggagas Peradilan Etik Di Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2015): 28–29.

37 Dewan Kehormatan Penyelenggara Pemilu, "Putusan Nomor 317-PKE-DKPP/X/2019": 35

they are in accordance with the procedure for making policies as mandated the Government Administration Law, namely the national statutory regulations and the General Principles of Good Governance (*Asas-Asas Umum Pemerintahan Yang Baik* 'AUPB').

The State Administrative Court Law and its amendments state that the reasons that can be submitted for filing a lawsuit against the State Administrative Court are that one of the State Administrative Court Decisions deviates from the applicable national statutory regulations. The KPU decision that follows up on the Constitutional Court decision regardless of whether it is appropriate or not, is a State Administrative Court Decision which is recognized in the Election Law which states that the KPU and KPUD are obliged to follow up on the Jurisprudence Constitutional Court. Thus, the difference between the KPU decision and the Indonesia Bawaslu regarding the follow-up to the Constitutional Court decision is basically the territory of the court to decide whether such a State Administrative Court Decision is valid or not in terms of evidence of state administrative law, especially applicable national statutory regulations, and AUPB.

Judging from the considerations of the DKPP Decision No 317 of 2019, it has been stated that Evi has violated law and ethics because the KPU State Administrative Court Decision following up on the Constitutional Court Decision is different from the Bawaslu Decision.[38] This became an anomaly, when the DKPP which was formed to prosecute Ethics, however, entered the area of legal evidence to determine whether or not the State Administrative Court Decision on KPU was valid or not to follow up on the Constitutional Court decision with the form of the final sanction being the dismissal of Evi as a member of the KPU. When referring to DKPP considerations which disputed the differences in State Administrative Court Decision between the KPU and Bawaslu, the main object in question was whether or not the State Administrative Court Decision on KPU was relevant to the MK Decision, so that expressis verbis the object of the lawsuit in the DKPP ethics trial was the State Administrative Court Decision on KPU for the follow-up of the Constitutional Court Decision with the form of the final sanction for canceling the State Administrative Court Decision on KPU, instead of examining the ethical deviation practices of election implementers. So, it can be said that the DKPP has mixed up its authority in the context of trying ethics with trying the law to dismiss Evi Novida Ginting as a member of the KPU in DKPP Decision No 317 of 2019.

According to Jimly, mixing law and ethics is something that cannot be done[39], especially if ethical verification is carried out without prior legal evidence. Jimly argues, because ethics has a wider scope than strict and narrow laws, any violation of ethics does not mutatis mutandis constitute a violation of the law.[40] On the contrary, every violation of law is definitely a violation of ethics which requires legal evidence first. In line with Jimly, Atip Latipulhayat by quoting Jeremy Bentham argues, when ethics is broad and cannot be completely limited by law which has been recognized as a definite and coercive social order, an anarchic act will be created, that is, a person will precede his reason based on his own ethical preferences to adjust the order of society's behavior.[41] Therefore, conceptually, the authority of the DKPP to prosecute and decide on ethical deviations from the Election Administrator needs to be given a clear line of demarcation between adjudicating ethical violations and legal violations to prevent abuse of authority stemming from a mix-up of powers.

Based on this, the implementation of the DKPP authority to enforce the code of ethics for Election

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38 Dewan Kehormatan Penyelenggara Pemilu, Putusan Nomor 317-PKE-DKPP/X/2019 (2019): 35

39 Jimly Asshiddiqie, *Menggagas Peradilan Etik Di Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2015): 28

40 Asshiddiqie: 32. Berkaitan dengan hal tersebut, pergolakan antara lembaga dengan kewenangan mengadili etika dan lembaga hukum terekam dalam Putusan Mahkamah Konstitusi Nomor 76/PUU-XII/2014. Dalam Putusan *a quo*, Pasal 245 UU 17 Tahun 2014 Tentang MD3 memuat adanya penyidikan kepada anggota DPR karena adanya dugaan perbuatan pidana, wajib mendapatkan izin atau persetujuan tertulis dari lembaga etik DPR yaitu Mahkamah Kehormatan Dewan (MKD). Pada pertimbangan hakim Putusan *a quo*, hakim membatalkan kewenangan MKD dalam memberikan persetujuan penyidikan (hukum) karena tidak memiliki relasi dengan sistem peradilan (hukum). Berdasarkan hal tersebut, pada dasarnya Putusan *a quo* telah menghapuskan kewenangan lembaga etik (MKD) dalam proses penyidikan atau hukum yang sedang berjalan.

41 Atip Latipulhayat, "Khazanah Jeremy Bentham," *Padjadjaran Jurnal Ilmu Hukum* 2, no. 2 (2015), https://doi.org/10.22304/pjih.v2n2.a12: 423

Administrators is not always relevant and prone to abuse of authority, especially because of the nature of ethics enforcement itself which has a subjective dimension and its decisions are final and binding. Moreover, the dimension of the DKPP's ethical decision which refers to the Constitutional Court Jurisprudence requires that the President, KPU, and KPUD be followed up in the legal form in the form of a Presidential Decree or Indonesia KPU, Provincial, Regency or City Decisions. According to the Constitutional Court in its legal considerations, when the DKPP Ethical Decision is binding and has been followed up, it is a State Administrative Court Decision that can become the object of a State Administrative Court lawsuit. However, the Constitutional Court did not constitutionally and definitively hold a position on whether the DKPP Ethical Decisions which had been packaged in the form of Presidential, KPU, and KPUD Decrees were State Administrative Court Decision objects that could be tested or not, thus causing legal uncertainty. The uncertainty of the DKPP Ethical Decision as the object of State Administrative Court testing implements the results of the Jakarta State Administrative Court Decision No 82 of 2020 which revokes Presidential Decree No 34 of 2020 and contains DKPP Decision No 317 of 2019 a legal gray area in practice.

This was reflected in the claim for the cancellation of the 2019 DKPP Decision No 317 regarding the dismissal of the Reported Party as a member of the KPU. The reported party submitted a lawsuit for cancellation of Presidential Decree No 34 of 2020 which contained a follow-up to the 2019 DKPP Decision to the State Administrative Court. As a result, through the Jakarta Administrative Court Decision No 82 of 2020, it was stated that the Administrative Court canceled Presidential Decree No 34 of 2020 which contained DKPP Decision No 317 of 2019 which freed Evi Novida Ginting as a member of the KPU to rehabilitate her good name and improve her position as a member of the KPU as it was before being dismissed.

Referring to the Jakarta Administrative Court Decision No 82 of 2020, the President issued Presidential Decree No 83 of 2020 which contained the revocation of Presidential Decree No 34 of 2020 and DKPP Decision No 317 of 2019. However, in following up on Presidential Decree No 83 of 2020 to restore Evi's position as a KPU member, the KPU chairman was dismissed as KPU chairman by the DKPP for reinstating his position The reported party is a member of the KPU for following up on the a quo Presidential Decree, as stated in DKPP Decision No.123-PKE-DKPP/X/2020 (DKPP Decision No 123 of 2020) and stated that basically the DKPP Ethical Decision cannot be questioned, because it is final and permanent.[42]

3.5 Implementation of DKPP Authority as a Factual Action and Object of State Administrative Court Lawsuit

Ethical disputes or DKPP Ethical Decisions are basically decisions that are final and binding. And do not have any legal challenge procedures or final procedures to examine the ethical issues of the Election Administrator. But in practice, according to Bagir Manan, the existence of ethical and legal arrangements to regulate the professionalism of a profession that requires certain special skills or in casu Election Administrator often overlaps between the two. This is because, no profession escapes legal regulations,[43] so violations of the

42 Dewan Kehormatan Penyelenggara Pemilu, "Putusan Nomor 123-PKE-DKPP/X/2020". Pernyataan DKPP dalam menolak untuk mengembalikan Terlapor sebagai anggota KPU adalah melalui adanya aduan sidang etik terhadap Ketua KPU Arief Budiman pada Putusan DKPP 123 2020. Ketua KPU tersebut dalam menindaklanjuti Keppres 83 2020 yang mencabut Keppres Nomor 34 Tahun 2020 mengenai pemberhentian Terlapor, telah mengeluarkan Surat KPU RI Nomor 663/SDM.13-SD/05/KPU/VIII/2020 yang mengembalikan posisi Terlapor sebagai anggota KPU sesuai dengan amanat putusan PTUN. Sidang etik terhadap ketua KPU Arief Budiman dilakukan karena telah mengeluarkan surat tersebut dan mengembalikan posisi Evi sebagai anggota KPU yang dinilai oleh DKPP telah melampaui kewenangannya karena dalam Keppres Nomor 83 2020 tidak sama sekali menyebutkan adanya pengangkatan kembali Evi sebagai anggota KPU sebagaimana amar keempat Putusan PTUN yang memerintahkan untuk mengembalikan nama baik dan merehabilitasi keadaan Terlapor sebagai anggota KPU. DKPP dalam menilai Keppres 83 2020 yang tidak memuat secara spesifik dan khusus akan amar keempat Putusan PTUN yang memuat rehabilitas nama baik dan memulihkan keadaan Evi sebagai anggota KPU, dimaknai sebagai sikap bijaksana Presiden dalam memahami makna akhir/final dan tetap/mengikat pada Putusan Etik DKPP sebagaimana pertimbangan hukum Yurisprudensi MK.

43 Susi Dwi Harijanti, "Pengaturan Dan Penyelesaian Pelanggaran Etika Pada Masa Reformasi," in *Menggagas Peradilan Etik Di Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2015): 187. Bernard Arief Sidharta, "Etika Dan Kode Etik Profesi Hukum," *Veritas et Justitia: Jurnal Ilmu Hukum* 1, no. 1 (2015), https://doi.org/10.25123/vej.v1i1.1423: 226-231

law are also often interpreted as violations of ethics

In practice, there is an overlap between ethical and legal regulations, especially the authority of the DKPP to decide. This is because the authority exercised by DKPP is in direct contact with the administrative legal regime regarding the existence of one of the authorities in elections. In the ratio decidendi, the Jakarta Administrative Court Decision No 82 of 2020 states that even though testing the authority of the DKPP is not a formal dispute over the election process at the Administrative Court, it must be seen within the framework of a combination of Administrative Law and Election Law. So that it is interpreted as Election Administration Law which is synergistically, comprehensively, and integrally aligned. This is because election issues are always in the vortex of public law so the Administrative Court has jurisdiction to adjudicate any election administration disputes.[44] The understanding of DKPP authority as public law in casu Election Administration Law is in line with the understanding expressed by Hadjon, that public legal authority which creates public consequences, only comes from statutory regulation.[45] Therefore, DKPP authority, which originates from the Election Law, is interpreted as public law which can become the object of State Administrative Court review. Moreover, because DKPP authority has government coercion, one of which is the dismissal of public officials (KPU) which is embodied in a Presidential Decree, according to Ridwan HR this is a special authority that only public officials have.[46]

A further conflict arose over the follow-up to the Administrative Court Decision which reinstated Evi Novida Ginting as a member of the KPU which was again disputed by DKPP because the Ethical Decision which had been packaged in the form of Presidential Decree No 34 of 2020 according to DKPP could not be further tested even though it had been packaged in the form of a Presidential Decree. From a legal presupposition, this is the right thing because when what is being tested is a Presidential Decree, the object of the review only includes the procedures for making the a quo Presidential Decree and reviewing the contents of the a quo Presidential Decree to place the DKPP decision's order for conformity with what has been decided by DKPP. In addition, to prevent further interpretation or intervention on the independence of the DKPP in exercising its authority, the President or the KPU and the KPUD.[47] Therefore, reviewing the Presidential Decree is inappropriate because the Presidential Decree already contains the AUPB and the applicable national statutory regulations in casu placing the substance of the DKPP Ethical Decision in accordance with what has been decided.

Such a context has established that basically DKPP authority test cannot be carried out on the results of the Ethical Decision. Even in consideration of the Jakarta Administrative Court Decision No 82 of 2020, the panel of judges stated that the Court would not enter into the realm of the results of the substantive implementation of DKPP authority, but would examine it juridically (without entering the realm of ethics) regarding aspects of authority and procedures alone.[48] However, what missed the a quo State Administrative Court Decision was that the panel of judges tested the authority of the DKPP with the main object of the lawsuit in the form of a Presidential Decree, causing further conflict over the a quo State Administrative Court Decision in reinstating the Reported Party as a member of the KPU.[49]

If the testing of DKPP authority at the State Administrative Court is carried out with the object of a lawsuit in the form of a factual action as in the current administrative law regime through the Government

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44 Pengadilan Tata Usaha Negara Jakarta Selatan, Putusan Nomor 82/G/2020/PTUN-JKT: 244-256

45 Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia*, Cetakan ke 13 (Yogyakarta: Gadjah Mada University Press, 2019):69.

46 Ridwan HR, *Hukum Administrasi Negara* (Jakarta: RajaGrafindo Persada, 2006):123.

47 Mahkamah Konstitusi, Putusan Mahkamah Konstitusi Nomor 31/PUU-XI/2013: 71-72

48 Pengadilan Tata Usaha Negara Jakarta Selatan, Putusan Nomor 82/G/2020/PTUN-JKT, 2020:249

49 Kendati dalam Yurisprudensi MK menyebutkan, bahwa Keputusan Presiden dapat dijadikan dasar sebagai objek gugatan PTUN. Namun Yurisprudensi *a quo* diputus ketika belum adanya UU Administrasi Pemerintahan yang mengatur dan mengenal Tindakan Faktual dalam rezim hukum administrasi negara. Sebaliknya, Putusan PTUN *a quo* yang diputus pada tahun 2020 sejatinya harus menggunakan model atau jenis lain dari KTUN berupa Tindakan Faktual sebagaimana UU Adminsitrasi Pemerintahan yaitu menjadikan tindakan DKPP secara faktual yang melakukan kewenangan, tidak sesuai dengan yurisdiksinya dalam mengadili etik guna ditinjau tanpa harus menggunakan Keputusan Presiden sebagai dasar objek gugatan PTUN yang berhilir kepada konflik hukum dan etik secara berlanjut.

Administration Law, this will have a different perspective. Factual Action within the framework of the Law on Government Administration according to Enrico Simanjuntak is administrative action outside of the usual understanding of Administrative Decisions which are oriented towards Written Decisions and have a public law dimension because they contain the main idea that every community does not accept Written Administrative Decisions and/or Government actions, can hold an administrative effort.[50] In the problem of testing DKPP authority at the State Administrative Court, the appropriate mechanism to become the object of a judicial review is a factual action of the implementation, mechanism, and procedures as well as procedures for DKPP authority to prosecute ethics without including a Presidential Decree following up on the DKPP Ethical Decision as the object of a lawsuit. This is because the implementation of the authority of the DKPP is an authority that has a juridical dimension and originates from the Election Law and DKPP Regulations or known as attribution authority.[51] Thus, when DKPP's factual action takes the form of exercising ethical process authority originating from the attribution of authority to statutory regulations, it must be declared as an abuse of authority when it is not based on AUPB or applicable national statutory regulations.[52]

Factual Action as the object of the State Administrative Court lawsuit does not see the results of the DKPP Ethical Decision as the object of the lawsuit, other than because the DKPP Ethical Decision has an ethical non-legal dimension. But looking at how the implementation of DKPP's ethical authority is carried out, so that this avoids any misperceptions from DKPP to follow up on the results of the decision because what is being tested is not the DKPP's ethical decision, but the procedure for exercising authority in the juridical dimension as tried by the Administrative Court. Such a context places a clear line of demarcation between the authority product of the DKPP Ethical Decision which is final with an ethical dimension and the exercise of its authority which constitutes a legal act. Regarding products of DKPP Ethical Decision authority which are final and binding as well as breaking ethical sanctions, it cannot be tested on State Administrative Court because this is an ethical rule that cannot be mixed up by law and is not the authority of State Administrative Court to enter into every government affair to measure its wisdom (*doelmatigheid*) in decide on government affairs as reflected in the phrase "*De rechter niet op de stoel van de administratie gaan zitten"* (Judges may not sit on government chairs).[53]

Meanwhile, regarding the authority of the DKPP to decide on Ethical Decisions which are legal actions, it can become the object of the Administrative Court because every implementation of DKPP authority is carried out based on statutory regulations and public law, must be carried out without any arbitrary action or outside the applicable legal procedures. Therefore, such arbitrary action by a public official will be tested by the State Administrative Court with a measure of legal certainty (*rechtmatigheid*).[54] Thus, the implementation of the DKPP authority which carried out was not in accordance with the existing procedures in the Election Law and other regulations governing the procedures for ethical trials, it must be interpreted as a form of arbitrary legal action.

The form of oversight by the State Administrative Court within the conceptual framework in the form of Factual Action as the State Administrative Court object against DKPP is a manifestation of and in line with the implementation of constitutionalism in Indonesia. Even though the DKPP is an ethical dispute adjudicator, supervision of state institutions is still carried out according to the constitutional principle stated by Hilaire Barnett, that the constitution or applicable law does not only imply a legal idea regarding whether a decision is valid or not, including the DKPP Ethical Decision. However, the fact of how the procedure for making the decision is carried out, whether it is legal or not, is something that needs to be ascertained to prevent abuse of power in casu in the form of factual action.[55] Therefore, the object of supervision by the State Administrative

50 Enrico Simanjuntak, "Restatement Tentang Yuridiksi Peradlian Mengenai Perbuatan Melawan Hukum Pemerintah," *Jurnal Hukum Peratun* 2, no. 2 (Desember 3, 2019): 184.

51 Ridwan HR, "Pertanggungjawaban Publik Pemerintah Dalam Perspektif Hukum Administrasi Negara," *Jurnal Hukum Ius Quia Iustum*, 10, no. 22 (2003), https://doi.org/10.20885/iustum.vol10.iss22.art3: 28

52 Yodi Martono Wibowo, *Kompetensi Absolut Peradilan Tata Usaha Negara Setelah Pemberlakuan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan* (Bandar Lampung: Aura, 2018): 214

53 Ridwan HR, *Hukum Administrasi Negara* (Jakarta: RajaGrafindo Persada, 2006):305.

54 Ridwan HR, *Hukum Administrasi Negara* (Jakarta: RajaGrafindo Persada, 2006):304.

55 Hilaire Barnett, *Constitutional & Administrative Law* (London: Cavendish Publishing Limited, 2002): 5

Court on the implementation of DKPP authority in trying ethics is only limited to factual action in the form of procedures and procedures for adjudicating ethical decisions by DKPP.

4. CONCLUSION

DKPP decision is basically final and binding against the President, KPU, KPUD, Bawaslu, and Regional Bawaslu. This is because The DKPP's Decision is a ethical dimension is subjective, efforts cannot be made to annul ethics, and the mandate of the Constitutional Court Jurisprudence which has confirmed its decision is final for the President, KPU, and Bawaslu. However, because the DKPP Decision was born from a series of administration of public legal authority, namely the mandate of the Election Law, the consequence is that the authority exercised according to the Election Law is interpreted as a form of Government Administrative Legal Action (not written) which is a genus of State Administrative Court Decisions. This is in line with contemporary Indonesian state administration law which interprets State Administrative Court Decisions in the form of Factual Actions as stated in Article 87 of the Law on Government Administration.

Based on this, DKPP's Authority in producing DKPP Ethical Decision products is Factual Actions which are public legal actions so that they are objects of State Administrative Court testing. However, the Administrative Court can only test the DKPP authority based on the procedures for exercising its authority alone (Factual Actions) and not test ethical sanctions decided by the DKPP and does not make the Presidential Decree the object of State Administrative Court lawsuit, because the DKPP's Ethical Decision has an ethical dimension that cannot be mixed up by law and Presidential Decrees only as constitutive decisions in legitimizing DKPP Decisions which are declarative to be enforceable legally.

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