

Constitutionality of the Determination of the Candidate for Vice President of the Republic of Indonesia Based on the Law of State Administration



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ABSTRACT: In 2024 Indonesia will hold General Elections (PEMILU) to elect the President and Vice President. Interestingly, even though the election has been completed, there are still controversial matters that lead to endless debates, namely related to the polemic over the validity of the determination of Gibran Rakabuming Raka as the Vice Presidential Candidate of the Republic of Indonesia. This study aims to provide an objective picture of the validity from the point of view of state administrative law with a theoretical approach that refers to the purpose of presenting state administrative law. The research method used is normative juridical research, using primary materials in the form of KPU Regulations, KPU Decisions, and MK Decisions 90/PUUXXI/2023 and secondary materials in the form of books, journal articles, and relevant online sources. The findings of this study show that the determination of Gibran Rakabuming Raka as the Vice Presidential Candidate of the Republic of Indonesia is contrary to Formal and Material rules in State Administrative Law.

KEYWORDS: State Administration Law; Validity; Determination; Administrative Procedures.

I. INTRODUCTION

The draft of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution, mandates the state to promote general welfare. Such noble goals are given a constitutional burden to state administrators who are in direct contact with society. One of the instruments used to achieve this goal is guided by the formal and material rules of state administrative law. Oppenheim gave an affirmation stating that state administrative law discusses the state in a state of movement (*staats in beveging*) which is to learn all authority or apparatus in carrying out government processes. Furthermore, the administrative law of this country includes the regulation of procedures, procedures, administration, recording processes and all other administrative actions, then it will be referred to as the scope of state administrative law. Meanwhile, J.H.A. Logemann argues that the State Administrative Law includes special regulatory regulations, which, in addition to the generally accepted positive civil law, regulate the ways in which state organizations participate in the traffic of society. Then E. Utrecht said that the State Administration Law is a law that regulates part of the work of state administration.¹

The above assertion is also reinforced by Kranenburg's opinion that state administrative law regulates more detailed matters which are consequences of constitutional law including structure, duties, and authorities. Thus, state administrative law requires how the state and its organs perform their duties so that this revives constitutional law in the life of society, nation, and state. In 2024 the Indonesian nation will hold General Elections (elections) to determine the representatives of its people, both in the executive power and legislative power families. According to Article 22E Paragraph (5) of the 1945 Constitution that "General Elections shall be held by a General Election Commission that is national, permanent, and independent". The General Elections Commission (KPU) is one of the state institutions tasked with organizing honest and fair elections. The above is in line with the objectives of the election itself, namely: ²

- a. Enable a safe and orderly transition of government
- b. To exercise the sovereignty of the people; and
- c. In order to exercise the human rights of citizens

¹ Saindra Arafa Syam, *Kajian Hukum Penerapan Fiktif Negatif Dalam Hukum Administrasi Negara Sebagai Keputusan Tata Usaha Negara*, Jurnal Of Law, Vol. 6, No. 2, Januari, 2020. Hlm. 4.

² Moh Kusnardi, Harmally Ibrahim, *Hukum Tata Negara Indonesia*, Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia. 1988. Hlm. 330.

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The Indonesian democracy party has been completed on February 14, 2024. The election contains many endless polemics ranging from registration to determining candidates, including ethical issues of election organizers, presidential involvement in campaigning, registration administration, to the most interesting Constitutional Court Decision Number 90 / PUU-XXI / 2023 concerning the examination of Article 169 Letter q of Law Number 7 of 2017 concerning General Elections. Amar the Constitutional Court decision states that "the minimum age of 40 (forty) years *"is contrary to the 1945 NRI Constitution and has no binding legal force, as long as it is not interpreted as "at least 40 (forty) years old or has been/is occupying an office elected through general elections including regional elections."*¹

The Constitutional Court's decision has implications for the registration of Vice Presidential Candidate Gibran Rakabuming Raka who registered himself as a pair with Presidential Candidate Prabowo Subianto, which some people consider that the KPU action to accept Gibran's registration is administrative defective because the KPU has not followed up on the Constitutional Court Decision which should have been outlined in changes to the General Election Commission Regulation (PKPU), but the regulations used still use PKPU Number 19 of 2023 about the requirements to be a Presidential and Vice Presidential Candidate which contains provisions for Vice Presidential Candidates who are still 40 years old. The above polemic finally led to a visit again at the Constitutional Court, one of the petitioners' arguments was to ask the Constitutional Court to consider whether the registration status and determination of Gibran as a Vice Presidential Candidate was justified by the country's administrative law or vice versa.

The KPU, which is the main central door in the process of registering candidates for the 2024 Presidential Election, was then also used to make other legal maneuvers, namely denial of the rules made by itself under the pretext of following the Constitutional Court Decision Number 90/PUU-XXI/2023, therefore the KPU violated PKPU Number 19 of 2023 which still requires the age of 40 years by accepting the candidacy of Gibran Rakabuming Raka. Furthermore, Anies Muhaimin's application also confirmed that registration Gibran's acceptance still uses the legal basis for consideration of PKPU Number 19 of 2023 where article 13 paragraph (1) letter q of the PKPU still reads "The requirement to become a Presidential and Vice Presidential Candidate is to be at least 40 years old." Therefore, if the KPU is consistent with this legal basis, then according to the applicant, Gibran Rakabuming Raka's registration should be rejected because he does not meet the requirements. The above was also reinforced by Ridwan as an expert from the Faculty of Law, Universitas Islam Indonesia Yogyakarta explaining that the process of nominating the vice president and determining the results of the 2024 election from the perspective of administrative law is invalid.²

The debate re-emerged, in addition to the registration polemic, there was also a further polemic, namely KPU Decree Number 1632 of 2023 concerning the Determination of Candidates for the 2024 Presidential and Vice Presidential General Elections. In consideration of consideration, the decision still lists PKPU Number 19 of 2023 Article 13 Paragraph (1) letter q, even though these provisions have been amended through PKPU Number 23 of 2023. The formulation of the problem discussed is 1. Does the registration of Gibran Rakabuming Raka as a candidate for Vice President of the Republic of Indonesia violate the rules of Formil and Material Tentaun of State Administration Law? 2. What is the validity of the determination of Gibran Rakabuming Raka as a candidate for Vice President of the Republic of Indonesia according to the provisions of the State Administration Law? Therefore, this raises legal problems, especially related to the administrative process of registration and determination of Gibran as a Vice Presidential Candidate. Thus, based on the above background, the author is interested in conducting research entitled "*Constitutionality of the Determination of the Candidate for Vice President of the Republic of Indonesia Based on the Law of State Administration.*"

II. RESULTS AND DISCUSSION A. Review of Gibran Rakabuming Raka's Registration Administration Violations

The registration process in elections is very important. The defect of the registration process will affect the quality of the leaders produced. In the portrait of the State Administration Law described guidelines in conducting acts of state administration. Indeed, the understanding of state administration can be seen in two aspects; First, state administration as an organization, second, administration that typically pursues the achievement of goals of a state (public) nature means goals set by law *dwigend recht* (compelling law). According to Van Der Pot quoted by Abdul Latief that a valid decision is a decision made with the rules of procedure and the right substance. The conditions that must be met for the validity of a legal product are as follows :³

- a. *Bevoegheid (Authority)* the state administrative organ that makes decisions
- b. *Geen juridische gebreken in de wilsvorring (there is no juridical deficiency in the formation of the will)*
- c. *Vorm procedure*, decisions are set forth in a predetermined form and made in a predetermined manner
- d. The content and purpose of the decision are in accordance with the content and objectives of the basic regulations

¹ Amar Putusan Mahkamah Konstitusi <https://www.mkri.id/index.php?page=web.Berita&id=19979> dilihat pada tanggal 9 April 2024.

² <https://www.mkri.id/index.php?page=web.Berita&id=20192> dilihat pada tanggal 15 April 2024.

³ Abdul Latief, *Hukum dan Peraturan Kebijaksanaan (beleidsregel) pada Pemerintahan Daerah* (Yogyakarta), UII Press, 2006. Hlm. 24.

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In the event that a decision is issued against the background of an action above, the decision is considered to contain juridical defects so that it has void or void implications. Furthermore, Kuntjoro Purbopranoto a decision must meet formal or material requirements. The material requirements referred to by Kontjoro Purbopranoto are as follows: The instrument of government that makes it must be authorized (entitled)

- a. In the will, the decision-making tool of government must have no juridical flaws (*geen juridische gebreken in de welsvorning*)
- b. The decision shall be given the form (Vorm) stipulated in the regulation on which it is based and its making shall also take into account the procedure for making decisions if the procedure is stipulated in the regulation (*rechmating*)
- c. The content and purpose of the decision must be in accordance with the content and objectives to be achieved (*doelmating*)

Furthermore, for formal requirements, which must be met by the acting state administration in issuing a decree as follows:

- a. In the will, the decision-making tool of government must have no juridical flaws (*geen juridische gebreken in de welsvorning*)
- b. The decision shall be given the form (Vorm) stipulated in the regulation on which it is based and its making shall also take into account the procedure for making decisions if the procedure is stipulated in the regulation (*rechmating*)
- c. The content and purpose of the decision must be in accordance with the content and objectives to be achieved

The importance of formal accuracy for the acting state administration or state administrator in issuing decisions was also emphasized by Jazim Hamidi who stated the principle of formal accuracy in giving orders to the Acting State Administration (Acting TUN) who issued a decision, namely that every decision must be planned in careful preparation with the most accurate data possible, the formal principle of decision formulation shows that in the formation of a decision of the Acting PTUN must use rational considerations (*rationaliteit*) and must be able to provide clarity of understanding the same for the reader. Therefore, the published decision will be considered juridical defect if it is carried out in no formal or material terms. The following is a stretch of theoretical and empirical analysis of administrative violations committed by the KPU related to the registration of Vice Presidential Candidate Gibran Rakabuming Raka.

First, the KPU is not careful in following up the Constitutional Court Decision even though the decision is something very fundamental to be understood rationally, in detail, and comprehensively. The Constitutional Court as the guardian of constitutional and democratic values, indeed the nature of the Constitutional Court's decisions is final, with binding words based on ideal moral values.⁴ Indeed, the nature of the Constitutional Court's decision is final, with the word binding. Since, the decision of the Constitutional Court is generally binding, the parties concerned with the implementation of the provisions of the law that have been decided must implement the decision. However, since the norms in the law are a unified system, there is an implementation of the decision that must go through certain stages, depending on the substance of the decision. Therefore, there are also those who require further arrangements first. The meaning of the enforceability of the Constitutional Court Decision does not necessarily mean that when it is spoken publicly it immediately applies bindingly, but there are other meanings that must be understood. To see the validity of the decision, it can be seen by two things, namely the content of Legal Considerations and Amar Judgment as illustrated in the table below:

Decision of the Constitutional Court	Substance/Material	Output Enforceability
Legal Considerations	<ul style="list-style-type: none"> • There is still a (dissenting opinion) • There are different arguments but (concurring opinion) • In consideration of the existence of phrases to follow up 	Need to be followed up with laws and regulations
Amar Verdict	<ul style="list-style-type: none"> • Declaring the article contrary to the 1945 NRI Constitution 	Applies instantly spoken
Amar Verdict	<ul style="list-style-type: none"> • Declaring contrary to the 1945 NRI Constitution "as long as it is not interpreted" (adding phrases/norms to a law) 	Need to be followed up with laws and regulations

⁴ Nabitatus Sa'adah, *Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review*, Jurnal Administrative Law and Governance, Vol. 2. No. 2. 2019. Hlm. 235.

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If the table above is related to the Constitutional Court Decision Number 90/PUU-XXI/2023 regarding the age limit for presidential and vice presidential candidates, it is appropriate for the KPU to follow up on the decision because the Constitutional Court itself in its Amar Decision adds "phrases", and in its legal considerations there are still dissenting opinions and concurring opinions that there are still differences among the Constitutional Court judges themselves, therefore ordering the framers of the law to make changes against the legislation being tested. The above is a consequence of respect for the branches of state power where MK (nullifies norms), DPR (makes norms), Executive (makers and implementers of norms). Until now, there are often Constitutional Court rulings that not only declare a law contrary to the constitution, more than that it even tends to change the Meaning of the substance of existing norms, so that sometimes it conflicts with the original intent of the maker. Therefore, it is very important for the framer of the law to follow up on the Constitutional Court Decision.

Furthermore, the KPU decision to accept Gibran's registration, where the KPU has not changed its technical regulations, namely PKPU Number 19 of 2023 concerning Candidacy Requirements clashing with the principle of the rule of law (*Rechtstatat*). The rule of law requires state administrators to act in accordance with laws and regulations. This also reinforces Indonesia's position which is influenced by the legal tradition of the Civil Law System in contrast to Anglo Saxon where court decisions are the main source of law. If placed in a constitutional building, the regulation of the requirements to become president is regulated in Article 6 Paragraph (1) "The procedure for conducting the election of the President and Vice President is further regulated in law." This article provides guidelines in the implementation of elections, therefore the KPU must be subject to such arrangements. The Constitutional Court's decision to change the requirements to become a presidential candidate must be followed up by the framer of the law (DPR). This is in order to respect the formal aspects in order to produce quality substance.

Second, the KPU decision to accept the registration of Gibran Rakabuming Raka is an act of state administration to pursue state goals among its objectives, namely the occurrence of orderly, safe, and peaceful elections. However, this goal is inversely proportional to the registration process where the decision of the KPU to accept Gibran's registration is far from the usual procedure of administrative law. The KPU was not ready to complete the administrative file of the Minutes of Registration Acceptance (BAPP) when Gibran received his registration on October 25, 2024, but the KPU only published the minutes on October 27, 2023, even though the registration stage for presidential and vice presidential candidates in accordance with KPU Regulation Number 19 of 2023 took place on October 19-25, 2023. In the decision of the Honorary Board of Election Organizers (DKPP), The KPU has been deemed to have committed violations in that incident. DKPP argues that the actions of the KPU RI are unusual because they are carried out in accordance with administrative law principles. In its ruling, DKPP considered that the commissioners of the KPU RI should publish the minutes on the day and date of registration of each candidate-vice president, in accordance with the program and schedule of the nomination stages. The above KPU actions beyond the limits of reasonable reasoning should be when the registration files of Presidential Candidates and Vice Presidential Candidates have been verified in accordance with the specified date limit, it is mandatory to issue the Minutes of File Acceptance (BAPB) as the consequences of a legal relationship in the form of Rights and Obligations between the parties. Thus the procedural aspect as explained above that the conditions determined are related to the preparation of the decision and those related to the way the decision is made must be fulfilled which will then affect the content and objectives of the decision to be achieved (*doelmatig*).

Third, the KPU does not read comprehensively the Constitutional Court Legal Considerations, but the KPU only focuses on the ruling, whereas in constitutional theory, reading the Constitutional Court Decision must be read as a whole, including the legal considerations (*ratio decidendi*) because consideration is the reason why the judge arrived at the ruling. In legal considerations of the Constitutional Court Number 90/PUU-XXI/2023 explained that "According to the Court, constitutionally, although the framer of the law has the authority to determine the conditions for candidates for President and Vice President, the framer of the law is still bound by constitutional signs in forming laws, especially related to conditions that are rational, do not violate morality, are not discriminatory, and do not contain the existence of Injustice. In fact, it must not contradict Pancasila, the Constitution, the principle of justice, and human rights".

The above considerations provide a solution to the issue of age limit so that it is followed up by the framer of the law so that the content material related to age requirements in general elections can reflect a comprehensive aspect. Therefore, even though the DPR has not been able to convene at that time to follow up on the decision of the Constitutional Court, the KPU with all the instruments of authority given to the institution should prepare a juridical instrument as a consequence of the formality aspect of the administration of the rule of law.

B. Validity of Gibran Rakabuming Raka's Appointment as Vice Presidential Candidate

The term validity is a translation of the Dutch legal term "*rechtmatig*" which can literally be interpreted as "based on law". In English, the term validity is called "*legality*" which means "lawfulness" or in accordance with the law.⁵ The concept originated from the birth of the conception of the rule of law in the continental European tradition called the term (*rechtsstaat*) where government

⁵ Henry Campbell Black, *Black's Law Dictionary, 4th* (USA: West Publishing Co., 1968), hlm.1043.

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actions must be based on the existence of legal provisions governing "rechtmatig van het bestuur" which is based on the application of the principle of legality in all government legal actions.⁶ Furthermore, Philip M Hadjon also stated that the principle of legality in government actions/decisions includes i) authority, ii) procedure, and iii) substance. Authority and procedure are the basis for formal legality that gives birth to the principle of praesumptio iustae causa/vermodernn van rechtmatig/legitimacy of government actions. While the substance will give birth to material legality. The non-fulfillment of the three components of legality results in juridical defects of a government action/decision.⁷ According to the provisions of Law Number 30 of 2014 concerning Government Administration in Article 52 Paragraphs (1) and (2) it is stated:⁸

- (1) The conditions for the validity of the decision include:
- (2) established by an authorized official, made according to the procedure and the substance corresponding to the object of the Decision.
- (3) The validity of the Decision as referred to in paragraph (1) is based on the provisions of laws and regulations and AUPB.

In addition to the above, a decision is invalid if an acting state administration makes a decision by abusing his authority, exceeding his authority, including pretending his authority. As affirmed in Article 17 Paragraphs (1) and (2)

- a. Government Agencies and/or Officials are prohibited from abusing Authority The prohibition of abuse of authority as referred to in paragraph
 - (1) includes: prohibition beyond Prohibition Authority mixing Authority;
 - (2) and/or prohibition of arbitrary acts.

The above procedural arrangements provide constitutional limitations for acting government administrators in carrying out government duties, deviation from the above authority and procedure provisions will cause the decision to contain juridical defects and implicate cancellation to the court and potentially null and void. The process of determining Presidential and Vice Presidential Candidates whose status was previously only limited to "Prospective Candidates" changed to "Candidates" is essential considering that the determination stage means confirming that the process passed starting from registration, completeness of files, and other administrative completeness has been fulfilled. Conversely, if the decision making is mainly related to the determination of Presidential and Vice Presidential Candidates, it may contain juridical defects or invalid decisions (niet rechtsgelding beschikking). Therefore, there are several types of juridical defects in the decisions made, which are as follows:⁹

- a. Void decision (nietig)
- b. A decision that is absolute void (absolute nietig) if its cancellation can be claimed by any person
- c. A decision that is relatively void (relatief nietig) if the registration can be canceled by or demanded by certain parties
- d. Revocable decision (vernietigbaar)
- e. Absolute revocable decision (absolut vernietigbaar)
- f. Revocable decision nisbi (relatief vernietigbaar)

In issuing decisions, it is commonly known that consideration of weighing is mandatory to be used as a motivation or reason that causes the acting administration of the country to issue decisions. Explain the considerations that result in decisions taken by officials who issue government administrative decisions as a form of implementation of the accuracy of the material to be regulated. In Law Number 17 of 2017 concerning General Elections, if there is an administrative process dispute after going through the process at the General Election Supervisory Board (Bawaslu), it is then submitted to the State Administrative Court to assess the validity of the Decision issued by the KPU. KPU Decree Number 1632 of 2023 concerning the Determination of Candidates for the 2024 Presidential and Vice Presidential General Elections contains serious legal defects and violates the building rules of state administrative law. The following is a stretch of teritic and empirical flaws in the validity of Gibran's appointment as Vice Presidential Candidate.

First, the State of law requires all actions or actions of the government to have a clear legal basis for legality.¹⁰ This is a form of formal procedural adherence that is clear authority and procedure. The KPU action determined Gibran violated the principle of

⁶ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Konstitusi Pers, Jakarta, 2006, hlm. 369.

⁷ Syofyan Hadi, Tomy Michael, *Prinsip Keabsahan (Rechtmatigheid) Dalam Penetapan Keputusan Tata Usaha Negara* Jurnal Cita Hukum. Vol. 5 No. 2, December 2017. Hlm.389.

⁸ Pasal 52 Ayat (1) dan (2) Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan

⁹ Yos Johan Utama, *Hukum Administrasi Negara*, Universitas Terbuka Kementerian Pendidikan dan Kebudayaan, Tangerang Selatan, 2021. Hlm. 43.

¹⁰ Soehartono, *Eksistensi Asas-asas Umum Pemerintahan yang Baik Sebagai Dasar Pengujian Keabsahan Keputusan Tata Usaha Negara di Peradilan Tata Usaha Negara*. Jurnal Yustisia, Vol. 1, No. 2. Mei-Agustus 2012. Hlm. 181 ¹³ <https://www.mkri.id/index.php?page=web.Berita&id=20192> dilihat pada tanggal 15 April 2024.

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formal prudence. This principle requires that every acting government administration in carrying out administrative actions that give birth to legal relations and the legal consequences of issuing such decisions must be very careful, the planning is carefully prepared carefully and the data is as accurate as possible, especially those related to weighing considerations. In the weighing section in a decision provides instructions / guidelines so that the regulation of the content material does not deviate from the spirit of the consideration. According to Ridwan from an administrative law perspective, this decision is flawed in consideration and content defective because it lists Gibran who is not valid for registration. So that KPU Decree Number 360 of 2024 concerning the Determination of the results of the 2024 election is also flawed in content because it contains Gibran whose registration is not valid.¹³

The decision to determine Gibran is seriously juridical flawed because the juridical basis in the weighing section still lists PKPU 19 of 2023 which in fact has not changed the age requirement for vice presidential candidates or the PKPU has not added the phrase "once served as a regional head" even though the PKPU has been amended on November 3, 2023 and the determination of candidates on November 13, therefore, within the limits of reasonable reasoning, the KPU should no longer include Article 52 Paragraph (1) of PKPU Number 19 of 2023, but with the latest PKPU, namely PKPU Number 23 of 2023 concerning Candidacy for Presidential and Vice Presidential General Elections.

The following is the content of the consideration considering KPU Decree Number 1632 of 2023 concerning the Determination of Candidates for the 2024 Presidential and Vice Presidential General Elections. "That in order to implement the provisions of Article 52 Paragraph (1) of General Election Commission Regulation Number 19 of 2023 concerning the Candidacy of Participants in the General Election, the President and Vice President shall determine the Pairs of Candidates who have qualified as participants in the general election for President and Vice President." If you still want to include PKPU Number 19 of 2023 Article 52 Paragraph (1), then the formula rules are added with the phrase "The amendment is PKPU Number 23 of 2023."

The addition of this phrase is in order to prevent multi-interpretation for readers and those who implement the regulation because in fact the decision made by the acting state administration certainly should not open the possibility of being interpreted freely at the will of the individual, the decision must have a meaning of understanding and must not cause legal ambiguity. This is because it will cause chaos in the law itself.

Second, decisions that ignore formal procedures, consider matters not so important have the consequence that decisions made can be canceled to the State Administrative Court and even null and void. a decision is considered null and void (*van rechtswege nietig*) according to *Kansil* is if the effect of an act for part of it or for the whole for law does not exist (abolished) without the need for a decision of a judge or decision of another government body competent to declare void in part or all of the effect, while a decision that can be annulled is if there is a juridical defect in the element of subjectivity, The act is considered to remain / valid before the cancellation by a judge or authorized institution.¹¹ Regarding the cancellation of a decision / decree, administrative law does provide strict restrictions, this is in order to ensure the process of state administration runs as it should. The state administrative law regime regulates procedural procedures for canceling a decision as stipulated in Law Number 30 of 2014 concerning Government Administration.

Within the limits of reasonable reasoning, the annulment of a decision is also seen in its procedural aspect. The procedural aspect is whether the procedure for making State Administrative Decisions required by laws and regulations in the exercise of authority has been taken or not. If placed in the building of state administrative law, it can generally be described in the table below relating to some of the consequences of the cancellation of a decision as followst:¹²

Description	Nietig (Void decision)	Van rechtswege (null and void)	Vernietigbaar (can be cancelled)
Since when was it canceled	Ex tunc	Ex tunc	Ex nunc
Cancellation actions	By verdict/decreed Nature of decularly constaturing decisions/decisions	Without the need for a verdict / decision	There absolutely must be a decision / decision Nature of constitutive rulings/decisions

¹¹ *Kansil*, dan Chritine S.T. kansil, *Modul Hukum Administrasi Negara*, Jakarta, Pradnya Paramitha. Hlm.134.

¹² Yudhi Setiawan dan Boedi Djatmiko Hadiatmodjo, *Cacat Yuridis dalam Prosedur sebagai Alasan Pembatalan Sertifikat Hak atas Tanah oleh Pengadilan Tata Usaha Negara*, Jurnal Equality, Vol. 13, No. 1. Februari 2008. Hlm 8.

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A decision is valid if it is made with a clear procedure and purpose of substance, whereas a decision containing a procedural defect or juridical defect in its format, is an invalid decision. In principle, if the KPU decision regarding the determination of Gibran is placed in a formal aspect in making a decision, the KPU decision regarding the determination of Gibran in principle can be requested for cancellation through the State Administrative Court due to juridical defects and inaccuracy of the KPU in accommodating every legal event that occurs due to the development of the dynamics of election law from the registration stage to the final stage of legality of the candidates, namely the determination.

Third, the KPU in making changes to the PKPU did not directly consult the DPR as a representative of the people but instead sent a letter to the party chairman so that this was contrary to the principle of people's sovereignty and violated the provisions of Article 75 Paragraph (4) of Law 7 of 2017 concerning Elections, it was stated "that in the event that the KPU establishes KPU Regulations relating to the implementation of the election stages, The KPU is obligated to consult with the House of Representatives and the government through hearings." After 7 days, the KPU then only consulted with the DPR on the grounds that at that time the DPR was in recess even though if it referred to Article 254 Paragraphs (4) and (7) of DPR Regulation Number 1 of 2020 concerning House Rules.¹³ It states that "during the recess of the House of Representatives hearings may be held." The chaos of the KPU action leads to abuse of authority which is contrary to the principle of abusing authority in the Government Administration law. In the explanation of the regulation, it is explained that what is meant by the principle of abusing authority is a principle that requires every government body and/or official not to use its authority for personal or other interests and is not in accordance with the purpose of granting such authority, does not exceed, does not abuse, and/or does not mix authority.

III. CONCLUSIONS

1. As a matter of principle, at the registration stage the General Election Commission did not make careful and thorough preparations. Furthermore, in the rules of Formil, the KPU is late in issuing the Minutes of Acceptance of Registration (BAPP) so that it is contrary to the rules of Formil and Materil in the State Administration Law.
2. The validity of the KPU decision on the determination of Vice Presidential Candidate Gibran Rakabuming Raka also contains juridical defects and is not careful in including the basis for consideration of changes to the PKPU so that it can be requested for cancellation to the State Administrative Court.

IV. SUGGESTION

The General Elections Commission As The Organizer Of Elections In Overseeing The Democracy Of The Indonesian Government Should Be More Careful And Mature In Preparing The Entire Series Of Electoral Activities, Starting From The Registration Stage Even To The Request For Dispute Of General Election Results (Phpu) To The Constitutional Court

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Regulation

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- 2) Undang-Undang Nomor 17 Tahun 2017 Tentang Pemilihan Umum
- 3) Peraturan Komisi Pemilihan Umum Nomor 19 Tahun 2023 Tentang Pencalonan Peserta Pemilihan Umum Presiden dan Wakil Presiden
- 4) Peraturan Komisi Pemilihan Umum Nomor 23 Tahun 2023 Tentang Pencalonan Peserta Pemilihan Umum Presiden dan Wakil Presiden
- 5) Keputusan KPU Nomor 1632 Tahun 2023 Tentang Penetapan Calon Peserta Pemilihan Umum Presiden dan Wakil Presiden Tahun 2024
- 6) Putusan No. 35-PKE DKPP/II/2023 dan No. 39-PKE DKPP/II/2023 tentang Pelanggaran Etik
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