

THE AUTHORITY OF POLITICAL PARTIES IN RECALLING MEMBERS OF THE HOUSE OF REPRESENTATIVES WHO ARE SUSPECTED OF COMMITTING CRIMINAL ACTS

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Abstract

The recall arrangement reappeared in Law Number 22 of 2003 concerning the Composition and Position of the MPR, DPR and DPRD. In Article 85 subsection (1) it is affirmed that members of the House of Representatives stop between times because: a. death; b. resign as a member at his own request in writing; and c. proposed by the political party concerned. Recall is defined as the process of recalling a member of a representative institution to be dismissed and replaced with another member before the end of the term of office of the withdrawn member. From this understanding, it can be seen that the Recall mechanism is the prerogative of political parties.

Meanwhile, in Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning Political Parties, it is stipulated in Article 12 that political party members who are members of a people's representative institution can be terminated from membership from a people's representative institution if: a. declare to resign from the membership of the political party concerned or declare to be a member of another political party; b. dismissed from membership of the political party concerned for violating AD and ART; or c. committed a violation of the laws and regulations that caused the person concerned to be dismissed.

Keywords: Political Party, recall, House of Representatives, Criminal Acts.

1 INTRODUCTION

In general, democracy can be interpreted as people's control over public affairs on the basis of political equality rooted in a spirit that upholds freedom and recognition of individual rights. In making a decision is based on the will of the majority, regardless of the differences in social and economic status backgrounds.

Democracy is born out of the spirit of breaking down traditional-patrimonial power relations and seeking to realize equality in the relationship of the people and the ruler. The legitimacy of power no longer comes from above like in the theocracy model, but is rooted from below, from the mandate given by the people. Therefore, whoever holds power must hear and embody the voice of the people if he wants his power to have the support of the people (*Vox populi vox dei*). If the ruler ignores the voice of the people, his power will undoubtedly not last because he will lose the trust of the people, and lose the mandate he holds^[1].

Participation and accountability are the keywords that will determine the dynamics of politics. This opportunity for participation is concretely facilitated through elections which are essentially a mechanism for renewing the social contract between the government and the people as holders of sovereignty. The holding of elections always has significance for the political course

of a State, elections play an important role as^[2] : (1) a form of peaceful change efforts; (2) elections become an arena for contestation and competition of various political forces in a fair manner; and (3) with elections, there are efforts to make the distance between institutions and the people close. The public can communicate with the institution. Given the important role of elections, it is not surprising that the holding of elections is always accompanied by the hope of improving power relations and political leadership.

The term *recall* in Indonesian constitution is known as a substitute between times (PAW)^[3]. The right of recall in terminology in the political dictionary by B.N Marbun can be interpreted^[4] " a process of recall or replacement of members of the House by its parent organization, namely a political party, *Recall* as etymology is "*recall*". Meanwhile, the right to recall a political party is a *recall* or dismissal in the term of office of a member of parliament (DPR / DPRD) by his political party.

2 METHODOLOGY

The research method used in this study is doctrinal law research method (doctrinal research) is research that examines laws that are conceptualized and developed on the basis of doctrines adopted by the conceptor or the developer^[5]. It is called doctrinaire legal research, because this research is conducted or indicated only in written regulations or other legal materials. Research or document studies are due to this research being carried out more on secondary legal materials in libraries^[6]. This type of research is also referred to as normative research, In accordance with the substance of the legal problem to be studied in this paper, namely the right to recall political parties. This writing is a writing that mainly examines the provisions and principles of law and the application of rules or norms in positive law

3 FINDINGS AND DISCUSSION

Recall is a natural thing to exist as an instrument / institution that can control the membership of the DPR, because when it meets one of the *recall* conditions above, the dpr membership concerned will be able to be dismissed during its term of office. We can imagine if this *recall* was abolished , where there was no mechanism for dismissing the house's membership and even if he made a mistake. However, what becomes a problem is when this *right of recall* is also given to political parties, because according to Article 239 paragraph (2) letter d, g and letter h of Law Number 13 of 2019 concerning amendments to three laws 17 of 2014 concerning the People's Consultative Assembly (MPR), the House of Representatives (DPR), the Regional Representative Council (DPD), and the Regional People's Representative Council of the DPRD) states that it

gives special authority to dismiss a member of a political party who will boil down to the determination of a person as a member of the House of Representatives as well, as well as in article 16 paragraph (1) letter d of Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning Political parties which also explains that political parties can *recall* their members on the grounds that the member violates the Ad and ART of the political party.

When a person is dismissed as a member of a political party carrying it, it will also be followed by dismissal from membership of the House of Representatives and more tragically if a member of the political party concerned moves or becomes a member of another political party, it will be recall from the membership of the DPR (Article 16 paragraph (1) letter c) and from that article, there is a conflict of norms between the norms regulated in article 16 paragraph (1) letter c of Law number 2 of 2011 tentai political parties with norms regulated in Article 28E paragraph (3) of the 1945 Constitution which states "everyone has the right to freedom of association, assembly and expression of opinion" so as to cause juridical consequences that are both private law and public law.

3.1 Authority of Political Parties

In essence, political parties have the main function of seeking and maintaining power, besides that political parties also have fun gsi among others^[7]:First, As a Means of Political Communication, in carrying out functions as a means of political communication, political parties have an important role as a liaison between the governing and the goverished. Second, as a means of political socialization, the function of party politics is an effort to create an *image* that political parties fight for the public interest and higher in value if they are able to educate their members to become human beings who are aware of their responsibilities as citizens and put their own interests under the national interest. Third, as a means of political recruitment, the function of this political party is the selection of leadership and qualified cadres. Fourth, Political participation, political participation is the activity of ordinary citizens in influencing the process of making and implementing general policies and in participating in determining the implementation of government. Fifth, as a means of regulating conflict, the potential for conflict always exists in every society. The heterogeneous Indonesian state consists of ethnicity, religion, and others. Such differences can lead to conflicts. Thus political parties carry out the function of being conflict regulators.

3.1.1 *Recall Authority by Political Parties*

Recall in the Indonesian constitutional system and as part of the consequences of a democratic state in carrying out the wheels of government must be in accordance with the wishes or aspirations of the people, as stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) expressly hints that Indonesia recognizes the sovereignty of the people. In other words, the ruling government must gain legitimacy or recognition from the people. In the Indonesian government system, the legitimacy of the people is represented to the people's representatives who sit in the DPR RI at the central level and the regional level DPRD. [8]

3.1.2 *Recall of Board Members suspected of committing Criminal Acts*

Recall reappeared in Law No. 22 of 2003 concerning the composition and position of the MPR, DPR, and DPRD. In Article 85 paragraph (1) it is emphasized that members of the House of Representatives stop between times because: 1. Unable to carry out their duties on an ongoing basis or are unable to remain as members of the DPR; 2. No longer meets the requirements for candidates for Members of the House of Representatives as referred to in the Law on ELECTIONS; 3. Violate the oath/promise, code of ethics of the DPR, and/or not carry out obligations as a member of the DPR based on the results of the examination of the honorary body of the DPR; 4. Violates the regulations prohibiting duplicate positions as stipulated in the provisions of the laws and regulations; 5. Found guilty based on a court decision that has permanent legal force for violating a criminal offense with a criminal threat of as low as five years in prison.

Regarding the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional People's Representative Council, it is determined that a member of the House of Representatives (DPR) can be dismissed from membership in the House of Representatives (DPR) through Inter-Time Dismissal (PAW), if: a. unable to carry out duties on an ongoing basis or unable to remain as a member of the DPR for 3 (three) consecutive months without any information; b. violates the oath/promise of office and the code of ethics of the House; c. found guilty based on a court decision that has obtained permanent legal force for committing a criminal act that carries a penalty of imprisonment of 5 (five) years or more; d. not attending plenary meetings and/or meetings of dpr fittings which are his duties and obligations as many as 6 (six) times in a row without valid reasons; e. proposed by his political party in accordance with the laws and regulations; f. no longer qualified as a candidate for DPR member in accordance with the provisions of the laws and regulations regarding the general election of

members of the DPR, DPD, and DPRD; g. violates the prohibition provisions as stipulated in Law Number 27 of 2009 concerning the MPR, DPR, DPD, and DPRD; h. dismissed as a member of a political party in accordance with the provisions of laws and regulations; or i. be a member of another political party.

The problem arises if the recall is made when a new board member is suspected of committing a criminal offence contrary to the principle of presumption of innocence but the Honourable Body, as the body authorized to enforce the code of conduct and order of the members of the Council, expressed its readiness to crack down on troubled members of the House. For a member of the Board who stumbles upon a criminal case, as long as the status has not been accused, it cannot be temporarily dismissed (disabled). So if the status is already the new defendant is biased to be temporarily deactivated in office. The Honourary Body of the Council must uphold the principle of presumption of innocence. Because, even in court hearings, many of the Members were eventually acquitted. The Honourary Board cannot process Board members who are still undergoing legal proceedings. The Honourary Body may only deactivate a member of the Board if it is already a defendant.

4 CONCLUSION

Recall by Political Parties cannot be eliminated and is still needed to control its members who sit as members of the people's representative body in the House. However, the right and the people in making recall decisions are still needed as a form of People's Sovereignty which is embraced in order to continue to create checks and balances in the management of the state. So the role of Political Parties as a place where councillors are housed plays an important role in terms of conducting Recalls when there are Councillors who are suspected of committing these criminal acts are more in the forefront of ethics and moral responsibility before the Community.

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