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Legal Policies Governing Political Parties In The Indonesian Constitution

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Abstract

This paper analyzes the constitutionalization of political parties in the post-amendment of the 1945 Constitution of the Republic of Indonesia with two focus discussions, which are: The reasons behind the regulation of political parties in the 1945 Constitution of the Republic of Indonesia and its implications for the party system in Indonesia. This study uses a statutory approach. The results show that: there are two main reasons for the birth of the constitutionalization policy of political parties in the 1945 Constitution, which are: First, political parties are considered to have an important role in the democratization process in Indonesia, and Second, in order to ensure that political parties work in accordance with the principles of democratic principles and do not act against the law and the constitution. The constitutionalization policy of political parties in Indonesia has led to the following implications: positioning of political parties as public legal entities, the obligation for the state to provide financial subsidies, the formation of cartelization in the party system, and the development of Party Rent Seeking model.

Keywords: Legal Policy, Political Parties, Institutionalization of Political Parties.

A. Introduction

One of the most monumental achievements of the Indonesian reform movement in 1998 was its success in changing the style of authoritarian rule to a democratic government regime. The democratic system is actually a mandate of the 1945 Constitution of the Republic of Indonesia, which is not only limited to politics but also includes the economic sector. However, in reality, the government was not always managed democratically as happened - for one thing - during the New Order regime. Therefore, when the New Order regime collapsed and was replaced by the Reformation Order, democratizing the government became one of the main goals.

One of the things that is being carried out to build and strengthen the democratic order in Indonesia is by perfecting the legal basis for regulating political parties so that their roles and functions are maximized as one of the main pillars of representative democracy. Yves Meny and Andrew Knapp (1998) stated "A democratic system without political parties or with a single party is impossible or at any rate

hard to imagine". The importance of political parties in a democratic country is reflected in several expressions of experts, for example: Clinton Rossiter (1960) stated "No America without democracy, no democracy without politics, and no politics without parties". Dalton (2013) argues "parties are the primary institutions of representative democracy; meanwhile Richards Katz (1980) firmly stated "modern democracy is party democracy".

The reform of the rules in the party sector is not only at the level of the law, but even to changes in the constitution. Historically, before the 1945 Constitution of the Republic of Indonesia was amended, there was not a single article that explicitly regulates political parties. The provision in the 1945 Constitution before the amendment which is often associated with political parties is Article 28 which reads: "Freedom of association and assembly, expressing thoughts orally and in writing and so on is stipulated by law". However, this article is deemed not to provide a definite guarantee of human rights protection because the fulfillment of these rights depends on the existence of a law. Therefore, there is an interpretation that as

long as the law has not been enacted, these rights are not protected (Prodjodikoro, 1989; Manan, 2003). Therefore, when the 1945 Constitution of the Republic of Indonesia was amended, Article 28 was maintained and strengthened by the addition of Article 28E paragraph (3) which reads: "Everyone has the right to freedom of association, assembly and expression of opinion". In fact, political parties experience constitutionalization in the sense that their existence is explicitly regulated in the articles of the constitution. Therefore, the Decision of the Constitutional Court of the Republic of Indonesia Number 67 / PUU-XVI / 2018 clearly states that political parties are organs that have constitutional urgency. In fact, Harjono (2008), a former judge at the Constitutional Court of the Republic of Indonesia, qualified political parties as state institutions with legal standing as petitioners in disputes over the authority of state institutions in court.

At least there are several articles in the amendments to the 1945 Constitution of the Republic of Indonesia that explicitly regulate political parties, which are: First, Article 6A paragraph (2) which contains the authority of political parties or coalitions of political parties to nominate pairs of candidates for President and Vice President; Second, Article 8 paragraph (3) regarding the authority of a political party or coalition of political parties to nominate a pair of candidates for President and Vice President if the President and Vice President pass away, quit, terminated, or are unable to carry out their obligations during their term of office simultaneously; Third, Article 22E paragraph (3) regarding political parties participating in legislative elections; and Article 24C paragraph (1) relates to the authority of the Constitutional Court of the Republic of Indonesia to adjudicate and decide on the dissolution of political parties.

Based on the description above, this research will try to answer two important questions as follows: First, what is the background of the 1945 Constitution of the Republic of Indonesia which explicitly regulates political parties? and Second, what are the implications of the constitutionalization of political parties for Indonesia party system?

B. Research Method

This research is a normative juridical research with statute approach. The data used is

secondary data consisting of: First, primary sources of authorities, e.g., legal products made by the government (executive, legislative and judiciary). Thus, the Primary sources are the court description, statutes, and regulations that form the basis of the legal doctrine. These are the official pronouncements of the governmental lawmakers. Second, secondary sources of authorities in which all publications that discuss and analyze primary legal materials are contained, such as scientific works by scholars, research results, journals, and so on. The data collection technique was carried out through a systematized and qualitatively analyzed literature study.

C. Discussion

1. The Background of Political Parties Regulation in the 1945 Constitution of the Republic of Indonesia

The regulation of political parties in the constitution and other statutory regulations can be interpreted in two ways (van Biezen, 2014). First, political parties have been considered as important institutions in democracy, so the arrangement of political parties in the constitution means that the positions and positions of political parties have been strengthened in the political system. This constitutional guarantee has effectively granted the party official status as part of a state institution. The constitutionalization policy of political parties implies that parties are the main actors for the functioning of democracy, thus requiring maximum legal protection in order to carry out their functions properly; and second to ensure that political parties work in accordance with the principles of democracy and law.

In the Indonesian context, these two reasons are also the background for the emergence of policies to regulate political parties in the constitution. The members of Indonesian People's Consultative Assembly (MPR-RI) view that political parties play a very important role in the development of democracy in Indonesia. For example, this can be read from the opinion of the Group Representative action represented by Soedijarto, who emphasized the importance of including political parties in the Constitution as a consequence of the provision that all of the members of The House of Representative

(DPR-RI) are directly elected in the election (Mahkamah Konstitusi RI, 2010).

...The delegation of Utusan Golongan emphasized the need for House of Representative members to be elected through general elections in the hope that The House of Representative is truly capable and recognized as being able to represent the aspirations of the people in carrying out its legislative and supervisory functions to the government. This has a consequence so that the general election can ensure that the elected are truly recognized as representing the people. The next consequence ... is that the Constitution also needs to regulate political parties.

Meanwhile, when discussing the possibility of changing the presidential election directly and no longer being elected by People's Consultative Assembly (MPR-RI), Pataniari from PDIP faction argued that what was needed in the context of strengthening the democratic system was the empowerment of democratic institutions, including political parties and representative institutions. The same opinion was also conveyed by Valina Singka Subekti, the spokesperson of Utusan Golongan who suggested that the constitution in addition to containing provisions on general elections also needs to clearly regulate provisions regarding political parties. On that basis, Valina proposed a special chapter in the Constitution, which is: General Elections and Political Parties. on another occasion, A.M. Lutfi - a member by People's Consultative Assembly (MPR-RI), also touched on the importance of regulating political parties in the constitution as well as in elections.

Even though political parties are important institutions in representative democracy, in general, the performance and behavior of political parties do not reflect what they should be doing, which is strengthening democratic values. Most of the parties in various countries - including Indonesia - are actually viewed negatively by the majority of society because of their corruptive behavior and frequent abuse of power. The public is seen as an institution that only thinks about their own material interests and benefits, thus becoming the most vulnerable institution¹⁹ corruption and its consequences. Political parties are one of the least trusted democratic institutions.

Consequently, the increasing³¹ widely accepted view is that a tighter level of external control and monitoring of party activities and behavior is necessary to ensure that political parties will carry out their functions more effectively.

¹⁷ In this context, society demands the state to intervene in the management, activities and behavior of the party. As a consequence, the state has now taken a fairly large role and has the legitimacy to regulate internal affairs as well as external affairs of parties. The state has substantially increased its control over the party through public law in order to ensure that the party, in carrying out its activities, will do so in a transparent and accountable manner (Van Biezen, 2008). Thus, the second meaning of regulating political parties in the constitution and in various laws and regulations is as a means of government control over parties so that their behavior does not deviate from the function they are supposed to carry out, which is to support the creation of a better democratic process.

It is also for this reason that Article 2⁶¹ of the amended UUD 1945 gives the Constitutional Court the authority to dissolve political parties if they violate legal and constitutional norms. In full Article 24C paragraph (1) of the 1945 Constitution states:

The Constitutional Court has the authority to judge at the first and last levels whose decisions are final to test the law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties, and decide upon disputes over the results of general elections.

There were not many have proposed and discussed exploratively regarding granting authority to the Constitutional Court to dissolve political parties during the discussions by the People's Consultative Assembly (MPR-RI) I³⁹ Hoc Committee, both during the 1999 - 2000 MPR Annual Session and the 2000 - 2001 MPR Annual Session. At this meeting, the proposal for the dissolution of political parties was submitted by Soejtipto from the Utusan Golongan, Patrialis Akbar from the Reformasi Faction, Agun Gunandjar from the Golkar faction and Asnawi Latief from the PDKB³⁶ tion who in his proposal conveyed that the authority of the Constitutional Court, one of

which is to propose the dissolution of political parties. Indeed, the debate regarding the dissolution of political parties did not occur in depth. But in the end, the 2001 Ad Hoc Committee for the People's Consultative Assembly (MPR-RI) Workers Body agreed to give the Court the authority to try and decide the dissolution of political parties.

2. Implications of Political Party Constitutionalization

Direct political party regulation in the constitution and other law regulations is the most obvious form of state intervention in party politics. Through these regulatory instruments, the government can oblige parties to behave in a certain manner according to what they want. Consequently, the character of political parties which are traditionally and basically private organizations so that the state in a liberal democratic society will not interfere in regulating their behavior and organization. In recent years, political parties have been positioned as public institutions so that both external and internal activities must comply with external regulations made by the state which greatly dictate and affect the operations of the political parties' activities. Therefore, according to Ingrid van Biezen and Hans-Martien ten Napel (2014), the stronger a country's belief that parties are public organizations, the more regulation will govern them. In fact, the rule of law on political parties has become more and more prevalent, to the point that their quantity and quality far exceed what is normally tolerated for private association in a liberal society.

According to Paul Whiteley (2014), increased state interference in tightly regulating the party would have one of two opposite effects. On the one hand, strict regulation may have the effect of increasing trust and support for political parties. This happens if the public can be assured that with the existence of this regulation the parties will be well managed, free from corruption and policies that are determined in accordance with the aspirations of the wider community. If this were the case, the closeness of the political party and the state would undoubtedly enhance the party's reputation and make it more trusted by voters. But on the other hand, there are strict regulations governing political parties. The party will be seen by the public as an extension

of the state bureaucracy. This may not be a big problem if the country is running well and effectively. However, if the public's assessment of the state is the opposite, for example, the state is considered to have failed in handling and resolving problems that occur in the midst of society, then political parties as the main support for the running of the government will also be increasingly unattractive to many voters and in the end make the party less trustworthy. In this view, excessive regulation will certainly hinder public support for political parties.

Elaboratively, some of the consequences of the constitutionalization policy and regulation of political parties by the state in various laws and regulations will have the following implications: First, changes in the status of a political party legal entity from previously positioned as a private organization, changing to a public legal entity; Second, the State is Obligated to Provide Funding Subsidies; Third, there is cartelization in the party system; and Fourth, Party Rent Seeking is formed.

a. Change of Legal Entity Status for Political Parties

The answer to the question: "what position should be assigned to a political party in the middle of the debate as a private or public organization" cannot be explained with certainty. Because, when viewed from the background and organizational characteristics, political parties are clearly a distinctive association of citizens, which in this case includes organizations within the sphere of civil society (private). However, when political parties win elections, their main goal is to control public office positions in the government with which the party then controls and determines various public policies. Thus, in this context, the party is clearly a public body. Therefore, some experts, such as Lipset, Mainwaring and Scully, then put the party as an institution that is in the transition zone between the state (public) and private organization (Karvonen, 2007). However, apart from the theoretical debate over the status of the party, if we look at the development of parties in various countries, there is a tendency to put political parties or position them as public institutions. As stated by Anika Gauja (2008) that:

Political parties in the United Kingdom, Australia, Canada and New Zealand have traditionally been given the legal status of 'voluntary associations' – free to

organise and conduct their internal affairs in any manner they wish, subject to the laws of contract, associations and administration. Although many political parties would like to keep their 'internal affairs' beyond the reach of the law, the trend over the last century is for parties to be viewed more as public entities rather than private organisations and consequently to treat intra-party disputes as justiciable.

There are several reasons why political parties are increasingly positioned as public legal entities, some of which are: First, Political Parties are considered as institutions that are very important for the success of democratic work. Even though political parties have existed in every government system for a long time, political parties that are attached to the function of exercising control over the running of the government are a new phenomenon. In the era of ancient Greek democracy, the existence of political parties was considered unimportant because the administration of government was still very simple, allowing every citizen to directly participate in government (direct democracy). However, at present, due to the complexity of running the wheels of government and the increasing population, political parties as "brokers of ideas" and the main government actor, have become indispensable (Singh, S., & Singh, S., 1950). Therefore, in a modern democracy, political parties are seen as an institutional means. The main thing is to bridge the relationship between society and the government. In fact, not only is it a bridge between government apparatus - on a broader scale - political parties are connecting various interests between community organizations and civil society such as labor organizations, groups interests (interest groups), and between community organizations and government institutions.

The necessity of the presence of political parties in the modern constitutional system is illustrated by Sushil Chandra Singh's statement (1950) that when Stuart Mill wrote a book on representative government without discussing political parties and Bluntschli's writing in 1875, which did not consider it important to include references to political parties in state theory, at that time it was considered not a problem. big. However, this is now impossible

to tolerate anymore. Any writing that discusses the government in modern times will not possibly be separated from the discussion about political parties. The party is the main force that works and functions to guarantee the continuity of the government in the future. It is difficult to imagine representative democracy without political parties as a fundamental organizational feature (Shomer, et al., 2016), because political parties are the main actors in modern representative democracy and democratic decision-making processes. The role of political parties in the democratic process can be best illustrated by looking at their functions in a political system, namely as an intermediary institution, which not only helps organize the forces in the different parliaments, but is also the main source and mechanism for the recruitment of candidates for public office and aggregating interests and carrying out a representative function that connects voters with the state (von dem Berge, et al., 2013). Therefore, Peter Mair (1995) emphasized that in a modern democracy, whether it is an old (established) democracy or a new democracy, politics is about party politics. In other words, the twentieth century is not only a century of democratization, but also of party democracy.

Secondly, the relationship between the party and people is getting further apart while the relationship between the political parties and the state is getting stronger. The party experienced a deterioration in its relationship with the people while its role was getting stronger in government. In this context, there are two important findings from comparative research on political parties in advanced industrial democracies that, on the one hand, parties are getting closer to the state, and have become part of state-sponsored or funded cartels. Meanwhile, on the other hand, with a few exceptions, the party has lost its private organizational character and has fewer members and activists (Whiteley, 2014). When the role of the party in society shows a very significant decline, the public face of the party, and especially the role of the party in government, becomes stronger and the party enjoys various benefits from its position. This has been a source of contradiction in many contemporary democracies where sociologically, and in terms of the role of representation, political parties are considered irrelevant and have lost some of their main functions. In the Government, on the other

hand, the position of the party has actually become stronger and more special than in previous periods.

b. State Obligated to Provide Financial Subsidies

Political parties are generally intended to be voluntary organizations or private associations for political activists who will freely determine their own activities. Thus, the state should not regulate too much detail in the affairs of political parties. Supervision and assessment of the behavior of political parties should only be carried out on the public performances of political parties and the rest are internal matters that do not need intervention by the government. However, recently, political parties have developed in such a way as to become a professional election machine as the main vehicle for candidates for public office. This in turn causes the political parties to no longer claim to be an organization that fully deals with private interests. Currently, political parties have been seen as the main institution of democracy so that the state feels the need to intervene by providing direct financial assistance to ensure the sustainability of the party's existence, to create an equal and fair playing field between parties, and to prevent particularistic forms of financing in party.

Thus, as a consequence of political parties being positioned as public bodies, the state is obliged to provide financial assistance or subsidies through the state budget (APBN). Political parties that have traditionally relied heavily on financial contributions from the community (membership fees, contributions from donors, private companies or other affiliated associations) are currently (for most parties) have direct subsidies from the state. It has become a much more important resource, even if this is a matter of principle. Initially, party funding from public money was actually a new phenomenon both in established democracies and in new democracies, which occurred after the post-second world war period. Historically, political parties have relied heavily on private donations from cadres or donations from private businesses to finance their activities. Today, however, almost all countries have provided direct funding.

The introduction of direct state funding has made parties increasingly dependent on public money and state support. While this does not mean that other financial resources have

come completely irrelevant, the introduction of state subsidies was a turning point in the financing of political parties, which has led to a fundamental change in the character of the party from being previously qualified as a private association to becoming a public entity.

Following Ingrid Van Biezen's opinion (2008), there are several reasons why political parties need to be funded by the state. First, it relates to the desire to limit the influence of private money which has the potential to distort the democratic political process. However, political party funding which is concentrated only on one party will cause certain private interests (not public interests) to control and dictate the behavior of parties and elected officials; Second, related to the high political costs as a result of the increasing use of mass media and more expensive campaign techniques while the income of political parties from membership fees is decreasing due to the decreasing interest of citizens to join political party institutions; and Third, to create fairness and equality in political competition that allows new parties and small parties to compete fairly with big parties that have bigger capital financially.

Thus, the classical assessment of political parties which are understood as organizations that have a permanent linkage with society and a temporal linkage with the state where parties are considered as entities that do not depend on state resources and are also not managed or controlled by the state have been largely abandoned. At present, parties can no longer be understood only in terms of their relations with society, whose relations have become increasingly loose and temporal, but parties must be understood more deeply in relation to relations with the state which have become increasingly important both in terms of legitimacy and organizational resources. In other words, the current party is perhaps best understood as an organization that has a temporal linkage with society and a permanent linkage with the state (van Biezen and Kopecy, 2007).

c. The formation of Cartelization in the Party System

The global regulatory pattern on political parties shows that there are differences in institutional conditions and historical developments, each of which reflects differences in the need for regulations on

political parties. For example, between a democratic country versus a non-democratic country, a new democracy versus an established democracy. For democratic and non-democratic countries, making laws on rights and obligations in general - despite the fact that their capacity and seriousness to enforce or respect these laws can vary - is seen as a convention, that is something that should be made by the state. However, the specific objectives of regulating political parties are clearly different between democratic countries and non-democratic countries. Legislators in democratic countries must adhere to basic principles regarding political rights and civil liberties. Meanwhile, in authoritarian countries, the formation of political party regulations is only used as an instrument for the regime in power to legitimize and strengthen its position and suppress the position of its political opponents. In more detail, the different objectives of the formation of political party laws in established democracies, new democracies and non-democratic countries are described by Lauri Karvonen (2007) as follows:

- (a) In countries where democracy is clearly incomplete, or absent altogether, one main objective of a party law (PL) is to prevent or obstruct certain types of parties; simultaneously, certain other parties can be granted a privileged position;
- (b) In countries where democracy is young or about to become established, a PL may aim at preventing a particular party from gaining an unduly dominant position;
- (c) In established democracies, PLs are expected primarily to concern registration, finance and internal party democracy.

Meanwhile, according to Ekaterina R Rashkova and Ingrid van Biezen (2014), the existence of a party regulation can be manifested in two purposes, which are: as a tool to strengthen the legitimacy of political parties, but at the same time, it can be seen as an attempt by those in power to maintain the status quo and prevent change by creating additional legal barriers for newcomers' parties. For example, by imposing very strict and complicated requirements for the establishment of new political parties and/ or increasing the threshold number, making it difficult for new and small parties to get their cadres to sit in parliament. This is what Richard Pildes (2010) said that in

all democratic systems, those who occupy political office will be tempted to use the power and power at their disposal to adopt and shape regulations aimed at making it more difficult for their prospective political party challengers to succeed. All democratic systems run the risk that those in power will seek to adopt rules that weaken opposing parties. Especially in a cartel-style party system, one tendency is that the existing parties conspire to prevent new parties from entering the political arena by setting up various obstacles or ensuring that the old political parties remain completely out of control regardless of their different programs.

In essence, the cartelization of political parties, according to Richard S. Katz and Peter Mair (1995), is a condition in which parties generally try to secure their position by intensifying their presence in the center of power and by adopting institutional arrangements to protect their existence from the threat of newcomer political parties. Since the reformation, parties in Indonesia have formed a party system similar to a cartel based on five indicators (Ambardi, 2009), which are: (1) the loss of the role of party ideology as a determining factor in the behavior of party coalitions; (2) permissiveness in forming coalitions; (3) lack of adequate opposition forces; (4) election results have almost no effect in determining the behavior of political parties; and (5) strong tendency of parties to act collectively as a group. These five features, in particular the fifth, run counter to the generality of competitive party systems. Therefore, the central task of modern constitutionalism is to seek to preserve and maintain the ground rules of political competition which allow existing parties to compete for political power on fair and balanced terms.

d. The Development of the Party Rent Seeking Party Model

Kaare Strom (1990) stated three party typologies, which are: (i) parties with a vote-seeking type, (ii) an office-seeking type, and (iii) a policy-seeking party type. The Vote-Seeking Party model was first introduced by Downs so that this model was known as Downsian views. In this model, parties are nothing more than "a team of men" seeking to maximize their electoral support for the purpose of controlling government. Thus, Downsian parties are not only vote seekers but vote maximizers. The Office-Seeking Party is a

party type that seeks to maximize their control over political office / public office. Through a number of positions under its control, this party will obtain economic benefits through bartering various political policies. Meanwhile, The Policy-Seeking Party is more oriented on how to maximize its influence on the formation of public policies.

One of the implication³ of the cartel party system is that it will lead to party rent seeking, which refers to the notion in which political parties always penetrate and control the state through controlling public offices for their own benefit (Ramiro and Morales, 2010). In a party with a rent-seeking model, ideology is no longer important, but the party's biggest concern and focus is only on how to get as many votes as possible (Vote Seeking) to get and control public offices (Office Seeking). Thus, it is not an exaggeration to say by Rainbow Murray (2010) that the main objective of all political parties is none other than to win elections, and therefore party policies will be more responsive to what voters want than what parties believe to be the best. The party is not a programmatic or ideological organization, but only a means of seeking power and maximizing votes. They will be ready to change their behavior in any way necessary to achieve their goal of winning as many votes as possible.

The formation of the character of the rent-seeking party cannot be avoided because in the cartel party system, all parties almost certainly do not have significant differences in terms of policy choices. All parties have almost the same agenda, which is merely aspiring to control as much power as possible. Thus, even though normatively each party has different principles and ideologies, at the practical level, this has no effect at all in the context of decision making. Parties with religious ideologies and parties with nationalist leanings, for example, can collaborate together in a coalition building in the government. Therefore, it is very appropriate that the criticism conveyed by Ramlan Surbakti (2003) that in general political parties in Indonesia experience 3 (three) serious problems, which are: First, party ideology that is not operational so it is not only difficult to identify patterns and directions of public policies that are fighting for it but also difficult to distinguish one party from another; Second, internally, party organizations are less managed in a democratic manner so that political parties are more of a fighting organization than an

organism that lives as a member movement; Third, externally, they do not have a clear pattern of accountability to the public.

²⁷ D. Conclusion

Based on the analysis and discussion above, it can be concluded that the regulation of political parties in the Indonesian constitution has provided maximum legal protection⁵² for the people to establish political parties. After the fall of the New Order authoritarianism regime, political parties not only flourished at the national level, but were also allowed to be formed at the local level, especially in the province of Aceh. The executive can no longer dissolve political parties to silence their political opponents because political parties can only be dissolved through judicial mechanisms in the Constitutional Court. Political parties have become a key factor in Indonesia's success in consolidating democracy. However, the negative impact of the strong laws and regulations governing political parties has been used as a tool by the big political parties holding power in the government to suppress small parties or parties of newcomers by establishing various rules that make it difficult for new parties to can compete fairly and equally with the old parties. As a result, it is currently very difficult to form a new party because of the very strict requirements. Even if a new party is successfully established, it is certain that it will be difficult to get its cadres to secure seats in parliament.

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