Authorities Of The Constitutional Court In Dissoluting Political Parties

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Abstract.

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia states that, the Constitutional Court has the authority to try at the first and final levels whose decision is final to review laws against the Constitution, decide on disputes over the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties, and decide on disputes about the results of general elections. The dissolution of political parties through this legal aspect is the result of the third amendment to the 1945 Constitution of the Republic of Indonesia. Previously, the dissolution of political parties was carried out by the government. The dissolution of political parties through legal channels is a consequence of the statement that Indonesia is a state of law. This is also due to the provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that Sovereignty is in the hands of the people and implemented according to the Constitution. The provisions of Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia constitute a shift from the supremacy of the People's Consultative Assembly to the supremacy of the Constitution The research method used in this study is a normative juridical research method, which means that this research uses legal norms as a means to analyze problems. While the approach method in this study uses: statute approach, conceptual approach, historical approach, and comparison approach. To analyze in this research is to use the interpretation of legal systematics.The conclusion will answer the problems raised in this study.

Keywords: *UUD 1945, Constitutional Court, authority, dissolution, and political parties.*

I. INTRODUCTION

Indonesia is a country of laws. This makes Indonesia a country that is subject to the law. According to Winasis Yulianto, Indonesia must comply with state law. Therefore, the Constitution is the highest and most important law in a country, so it is often called the supreme law of the land. The cotitution is the source for all laws and other statutory regulations in the country. If a country's constitution is formed in writing, it will clearly become the formal source for all the country's laws and regulations [1].

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the UUD 1945, stipulates that the Constitutional Court [2], hereinafter referred to as the MK has the authority to adjudicate at the first and final levels whose decision is final to review laws against the Constitution, decide on disputes over institutional authority the state whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes about the results of general elections.From the provisions of Article 24C paragraph (1) UUD 1945 above, it can be concluded that the MK has a very strategic position in constitutional life. The existence of political parties, hereinafter referred to as political parties, is a feature of a modern democratic state. [3] The people as sovereign holders can entrust their mandate to political parties, which are elected and trusted by the people. Political parties are not only places for people to entrust their sovereignty, but political parties are also places for educating and preparing reliable candidates for legislative members, future leaders of the nation in the regions, in the provinces, as well as on a national scale.However, the journey of political party life is not as smooth as imagined. During the Dutch colonial era, the dissolution of political parties was carried out by the Dutch colonial government. This shows that the Dutch government ruled in an authoritarian way. Three parties were dissolved by the Dutch Government, namely: Indische Partij, Indonesian Communist Party (PKI), Indonesian National Party.

In the 2004 election, political parties were regulated as contained in Law Number 31 of 2002 concerning Political Parties. In 2004 elections by 24 political parties. There were also 26 political parties that did not pass the General Election Commission's verification, 58 political parties that did not meet the requirements as party legal entities and 153 political parties whose legal status was canceled [4]

The existence of political parties in countries that adhere to democracy is assessed has a strategic role, because it is appropriate for a democratic country to determine it the leadership of his country's power was built with a party system [5]. Without a party politics then democracy cannot work, because political parties function as intermediary between the people and the state. Miriam Budiardjo even explained further regarding the important function of political parties in the function of political communication, political socialization, regulator of political conflicts, and political recruitment. [6]. And as an organization, political parties is a corporation or legal person that has a different status and arrangement other forms of legal entity (juristic person). [7]. Legal entity status, either as a private association or specifically as a political party legal entity (partial legal).order), granted by state law (total legal order).

Legal entity status, either as a private association or specifically as a political party legal entity (partial legal order), is granted by state law (total legal order), is granted by state law (total legal order). Political parties themselves are divided into 2 categories, namely:

1 Based on legal procedures When a political party has gone through all the steps of legal procedures regulated in accordance with statutory provisions, the political party will officially receive the status of a legal entity. After becoming a legal entity, political parties can act through their organs as legal persons who have their own rights and obligations that differ from the rights and obligations of each member. However, if a political party does not yet have the status of a legal entity, political parties may already carry out their activities. in social life. Thus the existence of political parties can also be seen from a sociological perspective, even though they do not yet exist from a juridical perspective
2 On the basis of involvement in political activities This is related to the involvement of political parties in political activities, especially general elections. The main mechanism for entering the political realm is the general election so that the existence of political parties is politically determined by their existence and strength in participating in general elections. Juridical existence does not necessarily give political existence to political parties. It depends on how state law regulates the holding of general elections

The three political parties were disbanded because they were considered dangerous and disruptive to the stability of the Dutch colonial government. Indische Partij was disbanded because it was considered that this organization was a radical movement and was considered to be disrupting the stability of the government, in addition to the actions carried out by the Railway Workers' Union which angered the Dutch colonial government. The dissolution of the PKI was caused by a rebellion on November 13, 1926 in Jakarta, followed by acts of violence in West Java, Central Java, and East Java, and in West Sumatra on January 1, 1927. [8] In the current era, in the life of the UUD 1945, the dissolution of political parties is carried out by a state institution that is in the power of the judiciary, namely the MK. Thus, Indonesia wants to show that Indonesia is a state of law as well as a modern democratic state. But to this day the MK has never knocked on the gavel to dissolve political parties.This study will examine the authority of the MK in dissolving political parties in several countries. Most countries give the authority to the MK to dissolve political parties, but there are also countries that give authority to the Supreme Court or other judicial institutions to dissolve political parties.

II. METHODS

The research method used in this study is a normative juridical research method, which means that this research uses legal norms as a means to analyze problems. While the approach method in this study uses: statute approach, conceptual approach, historical approach, and comparison approach.

To analyze in this research is to use legal systematic interpretation.

The conclusion will answer the problems raised in this study

III. RESULTS AND DISCUSSION

1. Definition of the Dissolution of a Political Party

Political party consists of two words, namely party and politics. The word party refers to groups as community groupings based on certain similarities such as goals, ideology, religion and even interests. The grouping is in the form of general organizations that can be differentiated according to their areas of activity, such as social organizations, religious organizations, youth organizations, and political organizations. With political attributes, it means groupings engaged in politics. (Loc. cit.)Dissolution in English is dissolution. According to Black's Law Dictionary, *dissolution means (1) the act of bringing to an end, termination; (2) the cancellation or abrogation of a contract, with the effect of annuling the contract's binding force and restoring the parties to their original positions; and (3) the termination of a corporation's legal existence by expiration of its charter, by legislative act, by bankrupty, or by other means; the event immediately preceding the liquidation or winding-up process.* [9] Based on the Black's Law dictionary, the dissolution of a political party means the end of the legal existence of that political party. This can happen due to self-disbandment, merging with other political parties, or disbanding based on decisions of state authorities or as a result of new regulations or state policies. The last category of dissolution is referred to as enforced dissolution.

2. Existence and Purpose of Dissolving Political Parties

With the growing role of political parties in the modern democratic era, more complex arrangements are needed for political parties. Political party arrangements are needed to create a party system that is in accordance with the type of democracy being developed and the conditions of a nation. Regulations regarding political parties are also intended to guarantee the freedom of the political parties themselves, as well as to limit excessive interference from the government which can restrict freedom and the role of political parties as one of the institutions needed to implement people's sovereignty. In fact, regulation is also needed to guarantee the functioning of democracy within the organization and activities of the political parties themselves. (Ibid., p. 194.)In general, the aim of dissolving political parties is to protect: *first*, democracy which is intended so that the current democratic order is not damaged and replaced by another system that is not democratic. Democratic government must prevent forms that threaten democracy. This protection is manifested in the form of prohibitions on programs and activities of political parties that want to destroy the democratic order, as well as in the form of the obligation for political parties to be democratic both in the organization and in the methods used.

Second, constitutional protection is manifested in provisions that prohibit the objectives and activities of political parties to conflict with the constitution or to eliminate or damage the constitutional order. (Ibid., pp. 195-196.) Protection of the constitution is also manifested in the form of provisions that prohibit political parties by force or by force from wanting to change the constitutional order of the country or change the constitution. The aim of amending the constitution in a democratic and peaceful manner cannot be used as a reason for dissolving political parties.

As a democratic country, the role of political parties now and in the future will be increasingly important in the life of the Indonesian people. This is because a democratic country is indeed built on a party system. Political parties are a form of embodiment of the right to freedom of association which is closely related to freedom of expression and freedom of thought and belief. These rights are a means for citizens to participate in government so that guarantees for these rights are a prerequisite for democracy [10].

Third, protection of sovereignty includes the obligation for political parties to respect the principle of national sovereignty, prohibition of endangering the existence of the state, not violating independence and national unity or sovereignty, to prohibiting affiliation and obtaining funding from foreign parties. *Fourth*, protection of national security, realized through the obligation to respect and not interfere with national security, prohibition of inciting or advocating violence on any basis, prohibition of forming and using paramilitary organizations. *Fifth*, protection of state ideology is protection of certain ideas or principles which are seen as the basis of the state, for example pluralism, certain religious teachings, or even the principle of secularism. This protection is also manifested in the form of a prohibition on political parties adhering to or running programs based on certain ideologies or views that are seen as contradictory to the ideology and state constitution.

3. Authority to Dissolve Political Parties

In general, the court that has the authority to decide on the dissolution of a political party is the MK or the Supreme Court [11]. This is related to the dissolution decision which is final and binding, except in Hungary which can be appealed to the General Assembly of the College of Attorneys. In addition, there are at least two countries whose dissolution was carried out through ordinary courts, namely in Cambodia and Yemen, as well as specifically for administrative reasons in Romania. On the other hand, only one country has had its dissolution carried out by the government before being decided by the Supreme Court, namely Pakistan.Based on provisions in several countries, the dissolution of political parties is more the authority of the MK. However, not all provisions governing the MK in countries that have a MK state the authority to decide on the dissolution of political parties. There are two possibilities regarding this. *First*, this authority is granted or regulated in other laws, for example laws on political parties, or indeed this authority does not belong to the MK of the country concerned but is in the Supreme Court or other courts. Several countries have constitutions which in the law on their MK include the authority to dissolve political parties including Albania, Armenia, Austria, Azerbaijan, Croatia, Cheznya, Georgia, Hungary, Germany, South Korea, Macedonia, Moldova, Poland, Portugal, Romania, Slovakia, Slovena, Spain, Thailand, Turkey, Taiwan and Chile. (ibid.) In the history of state administration in Indonesia, there are differences in the procedure for dissolving political parties.

The procedure always involves the role of the government and the judiciary. During the Old Order and New Order periods, which could be categorized as less democratic periods, the role of the government was bigger than that of the judiciary. The main determinant of the dissolution of political parties is the government, while the judiciary only provides considerations.On December 13, 1959, President Sukarno issued Presidential Decree (Penpres) Number 7 of 1959 concerning Requirements and Simplification of Party Parties. As a follow-up to the Perpres, Presidential Regulation (Perpres) No. 13 of 1960 was issued concerning Recognition, Supervision and Dissolution of Parties which was subsequently amended by Presidential Decree No. 25 of 1960. This regulation was followed by Presidential Decree (Keppres) No. 128 of 1961 concerning Recognition of Parties that comply with Presidential Decree No. 13 of 1960. The parties that are recognized are PNI, NU, PKI, Catholic Party, Indonesian Party, Murba Party, PSII, and IPKI. In addition, Presidential Decree No. 129 of 1961 was issued concerning Rejection of Recognition of Parties that complied with Presidential Decree No. 13 of 1960. The parties whose recognition was refused were PSII Abikusno, Free National People's Party, Djodi National People's Party.On August 17, 1960, Presidential Decree No. 200/1960 and Presidential Decree No. 201/1960 were issued which ordered Masjumi and PSI to dissolve themselves within 30 days because they were involved in the PRRI Permesta rebellion. If this is not fulfilled, it will be declared a banned party. In the end, Masjumi and PSI leaders disbanded their parties.In its development, the dissolution of political parties occurred in 1966 against the Indonesian Communist Party.

The dissolution and statement as a Prohibited Party is contained in Decision of The People's Consultative Assembly Number XXV/MPRS/1966 concerning the Dissolution of the Indonesian Communist Party, the Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia for the Indonesian Communist Party and the Prohibition of Any Activity to Spread or Develop Communism/Marxism Understandings or Teachings -Leninism.During the New Order era, political parties did not disband. However, in the early days of the New Order there was a policy of simplification of political parties because political parties were seen as a source of conflict that disturbed stability. Political parties came under various pressures to adjust to New Order policies. Against the PNI, for example, in April 1966 it was forced to hold a congress. In this forum, a number of old PNI figures were removed and several branches in Sumatra and Aceh were advised to voluntarily freeze themselves. The aspiration to establish a political party based on an Islamic period like Masjumi was accommodated under two conditions, namely: *first*, old figures were not allowed to sit in party management; *secondly*, Masjumi had to change its name so that it looked like a new party. The Indonesian Muslim Party (Parmusi) was formed. However, when Mohammad Roem was elected as general chairman, this party was not recognized and forced to replace its general chairman. The political party simplification policy at the beginning of the New Order period resulted in 10 election participants, namely: PNI, NU, Parmusi, Golkar, Catholic Party, PSII, Murba, Indonesian Christian Party, Perti and IPKI. [12].

Meanwhile, during the reform period, the role of the judiciary was bigger than the government. It is the judiciary that decides the dissolution of political parties. Meanwhile, the government acts as the applicant and/or as the executor of the court decision. (Op. cit., p. 201).At the beginning of the reform period, the authority to disband political parties rested with the Supreme Court. Based on Article 16 of Law Number 2 of 1999, political parties may not:

a. adhering to, developing, spreading the teachings or understanding of Communism/Marxism/Leninism and other teachings that are contrary to Pancasila
b. receive donations and/or assistance in any form from foreign parties, either directly or indirectly;
c. provide donations and/or assistance in any form to foreign parties, either directly or indirectly, which may harm the interests of the nation and state;
d. carry out activities that are contrary to the policies of the Government of the Republic of Indonesia in maintaining friendship with other countries.

The authority to supervise political parties rests with the Supreme Court. Even the Supreme Court can freeze and dissolve a political party. [13] .A political party can be dissolved by the Supreme Court based on a decision that has permanent legal force after considering information from the party's central board. Apart from that, it can also be done through the court in advance related to violations committed by political parties which can be the basis for dissolving political parties. Prior to the dissolution, the Supreme Court gave written warnings 3 times in a row within 3 months. (Explanation of Article 17 paragraph (3) of Law Number 2 of 1999 concerning Political Parties)After the amendment to the UUD 1945, in particular Article 24C paragraph (1) the dissolution of political parties became the authority of the MK. Article 24C paragraph (1) of the UUD 1945 states that the MK has the authority to try at the first and final levels whose decisions are final to review laws against the Constitution, to decide disputes over the authority of state institutions whose powers are granted by the Constitution, decide on the dissolution of political parties, and decide disputes about the results of general elections.As a implementing regulation of Article 24C paragraph (1) of the UUD 1945 above, Law Number 24 of 2003 concerning the MK and its several amendments was promulgated. In connection with the dissolution of political parties, it is regulated in Articles 68 to 73 of the Constitutional Court Law. As a follow-up to Articles 68-73 of the Constitutional Court Law, the MK stipulated Regulation of the Constitutional Court Number 12 of 2008 concerning Procedures for Dissolving Political Parties, hereinafter referred to as PMK 12.

4. The Petitioner and the Respondent in the Application for the Dissolution of a Political Party

What is meant by the applicant according to Article 3 paragraph (1) PMK 12 is the Government which can be represented by the Attorney General and/or Minister assigned by the President for this purpose. Whereas what is meant by the respondent according to Article 3 paragraph (2) PMK 12 is a political party represented by the leadership of the political party being petitioned for dissolution. According to Article 3 paragraph (3) PMK 12, the respondent can be accompanied or represented by his attorney.Granting the right to apply for the dissolution of political parties only to the government is to prevent mutual demands for dissolution between existing political parties. If the right to apply for dissolution is given to other parties, including political parties, it means that political parties are justified in demanding the dissolution of their own rivals. This must be avoided because in a democracy fellow political parties should compete in a healthy manner. Therefore political parties may not be given the position of petitioner in cases of dissolution of political parties.

In an application for the dissolution of a political party, it must be explicitly designated the political party being petitioned for dissolution. The application must be signed by the applicant or his attorney. The application contains at least:

a. Complete identity of the applicant and his attorney, if any, accompanied by a special power of attorney for that purpose;
b. A clear description of the ideology, principles, goals, programs and activities of the political party being petitioned for dissolution which is deemed to be contrary to the UUD 1945;
c. Evidence supporting the application.

d. Requests for dissolution of political parties received by the MK are recorded in the Constitutional Case Registration Book. The MK submits the recorded request to the political party concerned no later than 7 (seven) working days after the registration is made.
e. Because it is not specifically regulated, the next trial examination process follows the MK procedural law which includes preliminary examination, trial examination and decision

5. Reasons for Dissolving Political Parties

One form of sanction regulated in the Law on Political Parties is suspension and dissolution. Freezing sanctions can be imposed if a political party violates the prohibition related to the name, symbol or image, violates the prohibition on establishing a business entity and/or owning shares in a business entity. Freezing can also be imposed on political party organizations if they violate the prohibition on activities that are contrary to the 1945 Constitution and statutory regulations, or carry out activities that endanger the integrity and safety of the state.The freezing is referred to as a temporary freeze and is carried out for a maximum of one year. If the party that has been suspended commits the same violation again, it can be followed up with dissolution by the MK [14] .Apart from a temporary suspension, dissolution can also be carried out directly if a political party violates the prohibition to adhere to and develop and spread the teachings or teachings of Communism/Marxism-Leninism. (Article 48 paragraph (7) of Law Number 2 of 2008 concerning Political Parties) Dissolution is also regulated in relation to criminal sanctions in the case of political party officials using their political parties to commit crimes against state security as stipulated in Article 107 letter c, letter d, or letter e Law Number 27 of 1999 concerning Amendments to Criminal Codes Related to Crimes Against State Security, hereinafter referred to as Law 27 of 1999 [15]. If the administrator uses his political party to commit the crime, his political party can be dissolved.

Thus, the reasons for submitting a request for the dissolution of a political party include: [3].

a. Ideology is against the UUD 1945;
b. The principle is contrary to the UUD 1945;
c. Purpose is contrary to the UUD 1945;
d. The program is against the UUD 1945;
e. Activities contrary to the UUD 1945;
f. As a result of activities that are contrary to the UUD 1945;
g. Adhering to, developing, and disseminating the teachings of Communism/Marxism-Leninism; or
h. Political party officials use their political parties to commit crimes against state security as stipulated in Article 107 letter c, letter d or letter e of Law 27 of 1999.

6. Trial and Evidence Process

Finally, this article will end by quoting the statement of a Greek philosopher Socrates before the court: “gentlemen, the power of gentlemen can make laws as they please. However, in the end, the power of gentlemen will be defeated by the feelings of justice from the people, which cannot be killed or suppressed. Long after I die anti, gentlemen as judges will be known as examples, where law is not the same as justice. Law comes from the human brain, while justice comes from the heart of the people …” [16].

The trial process is divided into two stages, namely preliminary examination and trial examination. In the preliminary examination, what is checked is the completeness and clarity of the application. The judge is obliged to give advice to the applicant to complete and/or improve the application if deemed necessary. The applicant is given time to revise his application in a maximum of 7 days.

The application is submitted in writing, in Indonesian by the applicant or his attorney to the MK. The application is signed by the applicant or his attorney in 12 (twelve) copies. The application contains at least:

a. the complete identity of the applicant and his attorney if there is a special power of attorney for that purpose;
b. a clear description of the ideology, principles, goals, programs and activities of the political party being petitioned for dissolution deemed to be contrary to the UUD 1945;

c. evidence supporting the application.

Examination of the application is carried out in a plenary session open to the public attended by at least 7 (seven) Constitutional judges. The plenary session was chaired by the Chief Justice of the MK. Provisions regarding the chairman of the trial carried out in accordance with the UU MK. During the trial, the applicant and the respondent are given the same opportunity to present their arguments, both orally and in writing, accompanied by evidence. The evidence submitted by the parties can be in the form of letters or writings, witness statements, expert statements, statements of the parties, instructions, and other evidence.Judge Deliberation Meeting, hereinafter referred to as RPH, is held to make a decision after an examination of the trial by the Chief Justice of the Constitutional Court is deemed sufficient. RPH is carried out in private by the Plenary of Judges in the presence of at least 7 (seven) Constitutional judges. Decision making in RPH is carried out by deliberation to reach a consensus. In the event that deliberations do not reach consensus, decisions are taken by majority vote. In the event that a decision cannot be reached with a majority of votes, the final vote of the Head of RPH determines.Decisions that have been taken in the RPH are pronounced in a plenary session open to the public. The MK decision regarding the application for the dissolution of a political party is carried out no later than 60 (sixty) working days after the request is recorded in the Constitutional Case Registration Book.

The MK ruling may state:

a. the application cannot be accepted (***niet ontvankelijk verklaard***) if it does not meet the requirements specified in Article 3 and Article 4;
b. the request is granted if the request is justified;
c. the application is rejected if the application is unreasonable.

If the request is granted, the verdict:

a. grant the request of the applicant;
b. declared to dissolve and cancel the legal entity status of the political party being petitioned for dissolution;
c. ordered the Government to:
    1 Eliminate disbanded political parties from the list with the Government no later than 7 (seven) working days after the MK decision is received;
    2 Announce the MK decision in the State Gazette of the Republic of Indonesia no later than 14 (fourteen) days after the decision is received.
    3 The legal consequences of the MK decision in favor of the application referred to above, among others, are related to:
        (1). banning the right to life of political parties and the use of party symbols throughout Indonesia;
        (2). dismissal of all members of the People's Legislative Assembly and the Regional People's Legislative Council from political parties that have been dissolved;
d. prohibiting former administrators of disbanded political parties from engaging in political activities;
e. expropriation by the state of the wealth of disbanded political parties.

The MK decision regarding the dissolution of political parties was submitted to the Government as the applicant, the respondent, the General Elections Commission, the People's Representative Council, the Supreme Court, the Republic of Indonesia Police, and the Attorney General's Office.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the above analysis, it can be concluded that the mechanism for dissolving political parties has undergone significant changes. Initially, the dissolution of political parties was carried out by the government, while the courts only served as supporters. Whereas nowadays, the court is the dominant institution in dissolving political parties, the government is only a supporter.Things that can be recommended are, the applicant for the application for the dissolution of a political party is not only the government. According to the author, a person or legal entity can also be an applicant. This is based on the

idea that sovereignty is in the hands of the people and implemented according to the Constitution. Thus, the people who have sovereignty in the dissolution of political parties.

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