

Implementation Of Constituent Recall Of Political Officers In Indonesia As An Effort To Strengthen The Principle Of People's Sovereignty

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Abstract.

In Indonesia, the idea of recall has only ever been used by political parties; hence, the general populace has never been given the opportunity to participate in the recall procedure (also known as a constituent recall) for members of the DPR and DPRD who have been directly elected by the people. This is problematic due to the fact that it does not adhere to the democratic values and the notion of people sovereignty that are stipulated by the 1945 Constitution of the Republic of Indonesia. As a result, it is not in conformity with these principles. Doctrinal research is the research technique that was used in this study. Doctrinal research is defined as research that investigates laws that are conceptualised and produced based on the doctrines that are adhered to by the conceptualizers or formulators. This kind of study also falls under the category of normative research. The notion of political party recall rights is the subject of the study that is referred to in this research.

Keywords: *Constituent Recall, Popular Sovereignty and Democracy.*

I. INTRODUCTION

Direct democracy was the style of governance that prevailed in ancient Greece between the sixth and third centuries B.C. It is defined as a form of government in which all individuals freely and directly exercise political decision-making authority according to a majority vote mechanism. The tiny population and restricted land area that existed during the time of ancient Greece made direct democracy an efficient form of government. Only a tiny percentage of the population is eligible to participate in democratic provisions since these laws only apply to people who are legal or official inhabitants. Democracy is irrelevant to the vast majority of international purchasers and merchants. This is in contrast to the democracy practised in contemporary nations, which is no longer a direct form of government but rather a democracy founded on representation¹. In the natural view of democracy, representative institutions are considered to be important for a country. The system of existence of regional representative bodies at the central level is considered to be very important. As is the case in Indonesia, it is important that independent regional governments must exist within the territory of the Unitary State of the Republic of Indonesia. This is because democracy is a natural view of government. Because in addition to having individuals working at the central level, Indonesia also has people working at the regional level. Since regional potential has not been fully used and developed to its fullest extent up to this point, the duty of people's representatives will naturally be to fill the vacant positions in significant seats within the area itself². Countries across the globe make the claim that they are democratic nations, which are defined as nations that adhere to the idea of popular sovereignty in everything from their institutions to the kind of government that they choose to use.

In a broad sense, the term "democracy" may be used to signify either "democracy in the formal sense" or "democracy in the material sense." Countries often adhere to what is known as independent democracy, which is a kind of democracy in which popular sovereignty is not exercised directly by the people but rather via institutions that are representative of the people. This type of democracy is considered to be the formal embodiment of democracy. Therefore, democratic nations will always have institutions that

are representative of the people and which are governed by the constitution or fundamental law³. The People's Consultative Council (hereinafter referred to as the MPR) and the Regional People's Representatives (hereinafter referred to as the DPR) are both representative institutions that were established in Indonesia as a result of popular sovereignty as outlined in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). The notion of popular sovereignty is sometimes misconstrued as being entirely political. Because of this, there is a possibility of misunderstandings occurring. It would seem that the power of the people is held inside representative institutions. This is due to the fact that every principle of popular sovereignty is ingrained into the idea of representation. This interpretation does not, in and of itself, imply that the supreme authority of the people is displaced by representative institutions as a result of this view.

The people continue to have the ultimate rights and/or authority, while representative institutions only serve as a forum for the distribution of responsibilities. All state institutions, not only the People's Congress, are actors whose authority originates either directly or indirectly from the sovereign people. Institutions that execute or support the concept of supreme power (sovereignty) over the people include not just the People's Congress but also all other state institutions⁴. Representative institutions, which play a significant role in state administration, are also required to monitor all actions carried out in the course of fulfilling their tasks and exercising their power. The aim is that whatever they do should actually gain the confidence of the general people. The People's Congress and all parties participated in the People's Congress at that time came to a consensus decision to implement institutional representation arising from constitutional modifications with a structure that could preserve balance. This was done so that people could comprehend the significant significance behind the amendments⁵. When there is popular sovereignty, the people themselves are the ones who wield the most authority. This is consistent with the fundamental belief that democratic government springs from the people, that it is ruled by the people and for the people, and that the people are the foundation of democratic government's legitimacy. The governance of the people is referred to as popular sovereignty. The term "people" refers to a group of individuals who share certain characteristics, such as the same origin, the same region of residence or livelihood, the same honour or love, the same interests, the same thoughts, and the same requirements. People who decide to live together and feel the need to elect their own leader or representative and feel the need to live together also decide to hold general elections.

Popular sovereignty is the ultimate type of authority that may be exerted by the people of a nation, according to John Locke, Montesquieu, and Jean-Jacques Rousseau, who all made this claim. This ideology is a kind of rejecting the supremacy of monarchs and often comes into conflict with democratic principles. As a result, John Locke believed that the ideas of pactum unionis and pactum subjectionis should serve as the foundation for the development of states. In other words, the people as a whole grant the state or government the authority to control and administer the affairs of the people in their collective name⁶. Elections are one of the most clear and specific mechanisms that may be used to put popular sovereignty into action. Accordingly, "sovereignty is in the hands of the people and is implemented according to the Constitution," as is stated in Article 1 Paragraph 2 of the Constitution that was written in 1945. This indicates that the Constitution governs every aspect of how popular sovereignty is exercised to the fullest extent possible. Article 22E of the Constitution of 1945 places an emphasis on the fact that the realisation of people's sovereignty must be realised through people's representative bodies (council) at the national and regional levels as well as Regional Representative bodies or Councils (hereinafter referred to as DPD) whose members are elected through voting rights in general elections which are further regulated through the provisions of the law invite⁷. Jimly Asshiddiqie is of the opinion that the honesty of the people who are in charge of organising elections is the most important factor in successfully implementing democratic voting

procedures. In light of the fact that elections are the primary mechanism for putting popular sovereignty into effect, it is crucial for those in charge of organising elections to prepare detailed plans at each step of the election process in order to guarantee the elections' success⁸. Each member of the committee in charge of organising the election has to have rock-solid integrity and provide a rock-solid basis for carrying out their responsibilities so that they can do their jobs successfully⁹.

The issue that has to be answered is whether or not individuals who have been elected to positions within the DPR and Regional People's Representative Council (which will be referred to henceforth as the DPRD) may be removed from such posts. If you take a look at the legal framework and laws, you'll see that the only people who can do this are members of the DPR and DPRD who leave of their own accord. From the parliament or party submit their own proposals, particularly as regulated in the political party's articles of association, specifically in the case that members of the DPR and DPRD violate the party's articles of association or party guidelines, and/or can be considered as direct conflict and conflict by the political party management. Through the use of the Interim Change mechanism, which will hereafter be referred to as PAW, political parties will defend their respective interests. Article 22B of the Constitution of 1945 states that members of the DPR can be removed from their positions if they fail to comply with the terms and conditions set forth by the law and provisions as explained in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council, which is explicitly regulated in Articles 239 to Article 244 in addition to provisions in Law Number 17 of 2014 concerning the People's Consultative Assembly, the In the same vein, it is a breach of the oath or the DPRD Code of Ethics and/or a breach of commitment to fire members of the DPRD "if they are unable to carry out their tasks constantly or are absent permanently." carrying out his responsibilities as a member of the DPRD, infringing the restriction on holding parallel posts, and having a court judgement that is inkracht as a criminal offence may all result in a sentence of incarceration for a least of five years.

The idea of constituent recall, which in certain countries of the United States (US) offers the people the ability to remove their members from parliament, is almost nonexistent in Indonesia. This is in contrast to the situation in some nations of the US¹⁰. To put it simply, the mechanism that is put into place in the United States is done so by the staging of a referendum. In the United States, a local referendum is held as a control over the representatives in parliament. If the public is unsatisfied with the policies that have been issued by their representatives who sit in parliament, then the public may call a referendum in order to improve the policy or take efforts to improve the policy. This can be done if the public is displeased with the policies that have been released¹¹. In order to carry out the interim replacement process carried out by political parties in Indonesia, this notion has to be changed in order to include the people in efforts to improve people's sovereignty. Political parties are the ones who are carrying out the process. When it comes to the notion of temporary replacement in Indonesia, the process is often carried out by the party suggesting the names of impacted or troublesome cadres to the Speaker of the DPR by delivering a letter of dismissal accompanied by the grounds for doing so. As soon as possible, and no later than seven (seven) calendar days after being notified of the dismissal proposal. Within a maximum of fourteen (14) days, the proposal is sent to the President of the United States by the Chairman of the DPR in order to be formally dismissed. In this particular scenario, a conflict is likely to arise between political groups, the Speaker of the DPR, and the President. The power to recall is often used by political parties as an alibi for the removal of DPR and DPRD members whose conduct or opinions are not in accordance with party doctrine.

This strategy generates an unpleasant but indirect danger that looms over all members of the DPR and DPRD, making them hesitant to express the will of the people they are elected to serve. Members of the DPR and DPRD are restricted in their ability to behave and talk in a manner that is congruent with their beliefs due to the fact that they have the right to recall their political party. In addition to this, the right has a

habit of rejecting the will of the people and restricting their capacity to engage in political processes¹². As a consequence of the regulation of recall powers for political parties, political parties now have a more dominant position in the process of removing elected officials. If we accept the idea that the people are the ultimate source of power and that they have the right to choose who will represent them in government, then it only seems reasonable that they should also have the ability to force those representatives out of office¹³. On the other hand, the existence of political parties is an institutional form of freedom of opinion, ideas, opinions and beliefs in a democratic society. Therefore, the existence of political parties is closely related to the principles of freedom of expression, association and assembly.)¹⁴. The concepts outlined above are acknowledged and protected by the Constitution of 1945, which states, in Article 28E paragraph 3, that "Everyone has the right to freedom of organisation, assembly, and speech." This provision specifically regulates the principles outlined above. In point of fact, there are a variety of perspectives held in Indonesia with regard to the question of whether or not members of the DPR and DPRD have the right to be recalled from their respective political parties.

Some people believe that the purpose of the party's recall is to bolster political parties, which are the direct outcome of the growth of contemporary democracy. However, after the alteration that was made to the Constitution in 1945, it was not shown that DPR members were party representatives who had a delegation of party sovereignty. This was because the Constitution had been amended. In light of this, the procedure for expelling members of the DPR must be founded on the constitutional principle of popular sovereignty. This debate sparked a conflict regarding the implementation of the recall of DPR members from the party or whether the right to recall must be handed over to the people directly as a logical consequence of the application of the concept of popular sovereignty or whether it remains in the hands of political parties as representatives of the people. The conflict centred on whether the right to recall must be handed over to the people directly as a logical consequence of the application of the concept of popular sovereignty or whether it remains in the hands of political parties. According to the explanation that was just provided, the purpose of this study is to investigate and investigate the possibility of a constituent recall or referendum recall. With the use of this study, we want to ascertain how urgent it is to carry out the recall in Indonesia. The researcher articulated the dilemma of how the notion of inter-time replacement (PAW) existing in Indonesia and what the urgency of adopting component recall for Indonesia so far is based on the context that has been presented so far. The author employs a normative juridical writing technique in this piece, which also takes a legislative, conceptual, and case-based approach. In light of what has been said above, researchers are able to come up with a few other issue formulations, which are as follows:

1. What is the urgency of implementing constituent recall of political officials in Indonesia as an effort to strengthen the principle of popular sovereignty?
2. What are the obstacles to implementing constituent recall of political officials in Indonesia as an effort to strengthen the principle of popular sovereignty?

II. METHODS

Doctrinal research is the research technique that was employed in this study. Doctrinal research is research that investigates laws that are conceptualised and created based on the doctrines that are adhered to by the conceptualizers or formulators of the laws. Doctrinal research, which is defined as the study of law that is conceptualised and developed based on the doctrine followed by the formulators or formulators of the notion, is the technique of research that has been used in this investigation. Due to the nature of the legal concerns that will be investigated in this article, namely the power to dismiss political parties, there is another term for this form of study that is also used. It is called normative research. The provisions and principles of positive law, as well as the application of rules and norms in positive law, are the primary emphases of this article.

III. RESULT AND DISCUSSION

History of the Recall Concept in Indonesia

Since the New Order was implemented in Indonesia in 1966, the country has continuously changing members of the DPR. The issuing of this rule was essentially only utilised in the context of cleaning up the cabinet, which was still affiliated with President Soekarno, after the passing of Law Number 10 of 1966. This occurred after the law was passed in 1966¹⁵. It is stated in Article 15 of the Law no. 10 of 1966 about the Position of the Temporary People's Consultative Assembly and the Mutual Cooperation People's Representative Council in advance of the General Election, and it is as follows:

“a. Members of a Political Group can be replaced at the request of the party concerned; b. Members of Golongan Karya whose organization is affiliated with a political party can be replaced by the work organization concerned with the approval of their parent party; c. "Members of Golongan Karya whose organizations are not affiliated with a political party can be replaced at the request of the organization or agency concerned."

It is possible to say, in general, that the head of the party has the ability to replace members of the party who have different interests. By using this, members of a party might be indirectly expelled for the reason that they disobeyed their party's commands. This rule went through a total of three different revisions throughout the course of history, with the most recent one being in the year 1985¹⁶.

After the fall of the New Order, in 1999, Law Number 4 of 1999 concerning the Composition and Position of the MPR, DPR, and DPRD was released. This law, in general, did away with the ability of members of the MPR, DPR, and DPRD to switch political parties. With the presence of Article 8 of Law no. 31 of 2002 respecting Political Parties, rules were introduced in 2002 that defined the situation of political parties. These regulations stated that political parties had the right to engage in the following activities:

- a. Acquire the same, the same, and the same treatment from the state; autonomously organise and govern the organization's home;
- b. In accordance with the restrictions established by statute, obtain copyright from the Department of Justice for the use of the party's name, symbol, and picture;
- c. Take part in general elections in accordance with the requirements outlined in the Law on General Elections;
- d. Advancing the candidature of individuals for membership in institutions that are representative of the public;
- e. of line with the legislative provisions, suggest a replacement of members of the people's representative institutions who are serving in an interim capacity;
- f. Suggesting that its members be removed from their positions in the people's representative institutions in line with the rules established by statute;
- g. And in line with the requirements of the law, propose candidates for the positions of President and Vice President in pairs.

It is explained in the provisions of Article 8 letters (f) and (g), which clarify the stance of political parties in carrying out temporary replacements and dismissing members who are engaged in parliamentary seats. You may see this for yourself. In actuality, this item is often seen as an intervention on the part of political parties. As a consequence of this interpretation, the independence of legislative members is eroded, and the sovereignty of the people is removed from the people's representative institution, also known as the DPR¹⁷. Then, in 2003, the right to switch political parties was defined with the release of Law Number 22 of 2003 about the composition and position of the MPR, DPR, and DPRD. This law was issued in regard to the composition and position of the MPR, DPR, and DPRD. This article details the processes that must be followed in order to remove the chairman of the DPR and chairman of the DPRD and appoint a new one. Dynamics in the reform era, specifically during the 2004-2009 DPR period, the incident of DPR members being recalled occurred again; in this incident, the name of Djoko Edhi Sutjipto Abderahman was

involved; he was recalled by the National Mandate Party (PAN), with accusations that the name concerned was following comparative study activities abroad; in this event, the political party may come to the conclusion that this is not based on party interests or is not in line with party policy¹⁸. In 2010, there was another recall event carried out by political parties against Lily Wahid and Effendi Choiri, both of whom hailed from the National Awakening Party (PKB) political party.

This time, the candidates were targeted because they were members of the PKB. Along the way, Lily Wahid was given the opportunity to have a seat in the parliament via elections in which she was selected by the people directly in line with the terms of the legislation governing general elections. However, Lily and Effendi were unlucky enough to have their lives taken in such a way that they became victims of the political party chairman's consideration of being PAW. This was due to the fact that the chairman was regarded as being too critical and harsh in voicing policies that he believed were not pro-people, which at the same time was regarded as being disruptive to the interests of the party in general. Lily and Effendi became PAW victims as a result of the chairman's¹⁹. A situation quite similar to this one occurred in the year 2016, when the recall event took place once again, but this time it included the name Fahri Hamzah from the Prosperous Justice Party (PKS). Fahri was subjected to a recall (PAW) when it was determined that, in his capacity as a member of parliament, he had violated many political party laws and/or ART. As a consequence of these infractions, a recall was carried out against him. During that time period, the Prosperous Justice Party (PKS) selected Ledia Hanifah to succeed Fahri Hamzah in the position of Central DPR Representative²⁰. Then, at the beginning of 2022, something that was very visible in the public occurred, which became the subject of public discourse. This event was the PAW that was carried out by the Greater Indonesia Movement (Gerindra) party against DPR member Siti Nurizka Putri from the electoral district (dapil) of South Sumatra I for the remaining term of office in 2019-2024, and Reni Astuti was elected in her place

Where, over the course of the PAW process, and at the Plenary Meeting, the Chairman of the DPR in question was unaware that he would be participating in PAW. Therefore, if we take a look at the PAW cases that were carried out by political parties as described above, it demonstrates that the position of political parties in Indonesia is very powerful in determining the continued position of their elected members in parliament. To put it another way, political parties are the basis for determining the direction of legal, political, military, and economic development policies, among other things, at the seat of parliament. PAW or recall events carried out by political parties occur not only at the DPR level but also at the DPRD level. This is not the case just in the DPR. During the time of the New Order, PAW was thought to be a very real ghost in a few of the areas, and DPRD members are among those who hold this belief. During that time period, the government was highly centralised, which presented members of the DPRD with a difficult situation. Where the DPRD, which has the capacity to make regional level rules, feels overshadowed and frightened by the will of the central government. The DPRD has the authority to form regional level regulations. Because the centre exercises its free will, it is quite simple to overturn restrictions that were established by the DPRD. The upshot of this is that the rules do not have any aspect of siding with the people, based on the threats made by the executive. This is because the DPRD is more closely aligning itself with the instructions issued by the administration. PAW incidents often arise in institutions that serve as regional representatives. The Indonesian Struggle Party (PDI), which Zukri Misran was a member of, was victimised by one of these incidents.

The investigation into the incident that took place started when Zukri sought to run for the Regional Head Election (Pilkada) in 2016, in which case the individual involved had to resign as an active member of the DPRD using the PAW route by his party. This prompted the investigation into the incident that took place. Nevertheless, the member in question was not granted permission to step down from his active role as a member of the legislature in the decision letter that was sent out. Concerned about the wisdom of this decision, Zukri filed a protest, which contributed to the resulting uncertainty over the administrative

directives provided by the government²¹. The manipulation that is carried out by political parties in the process of nominating their representatives for general elections is shown by anomalies such as this one. In its most basic form, the notion of recall without democratic participation from the people would result in a great deal of room for manipulation of the recall process on the part of political parties and other interested parties. In light of the instances that have been shown so far, this demonstrates that political parties make extensive use of recalls in order to satisfy the organisational interests that are important to them. Members of the legislature are more concerned with appeasing political parties than they are with representing the will of the people. In point of fact, the presence of a legislature is meant to serve as an expression of the sovereignty of the people in a democratic state, and more than that, the presence of a legislature is required in a democratic system in the context of a check and balance system, also known as a balance of power. In other words, the existence of a legislature is an absolute necessity in a democratic system²².

Constituent Recall System

In the English meaning, recall is composed of the terms "re," which means return, and "call," which means call or return. Together, these words form the word "recall." When these two terms are used together with the word "recall," the resulting phrase will convey the idea of being summoned or called again. In the meanwhile, the definition of "recall" that can be found in dictionaries devoted to politics describes an event as one that "involves the departure of a person or many persons from an active representative institution." In the United States (US), the phenomenon known as recall refers to the power of the majority of people to recall or recall elected individuals. More precisely, recall elections are the name given to the process by which this right is exercised. A basic recall of active general officials (political officials), employed as a control mechanism in order to minimise events or actions that are judged not to be in accordance with the interests of the people or the will of the people, in this instance include crime, corruption, and others. The purpose of this control mechanism is to minimise events or actions that are deemed not to be in accordance with the interests of the people or the will of the people. Not only that, but one might also say that the recall action is monitoring the behaviour of officials to ensure that it is in accordance with the constitution of each nation²³. It is more often referred to by its more formal name, referendum recall, when discussing the mechanics of constituent recall in the United States.

Recall referendum is a notion that may be regarded as a constitutional method or mechanism that permits public officials to be recalled from their positions in parliament by their constituents (constituent election) before the end of their term of service in parliament²⁴. Implementation of a recall referendum, with the goal of achieving great legitimacy from the people for the democratic process as a result of their participation in the process themselves. A referendum, on the other hand, is a method of decision making that engages the general population directly. Therefore, one might say that a referendum is a chance for the whole public to engage and become involved in the process of making a political choice. The people have the authority to perform a temporary replacement of their representatives via the process known as "PAW." Indirectly, the right to recall gives the people the ability to interfere and decide the policies that are enacted by members of political parties in parliament who are seen to not reflect the wants or interests of the people as a whole. However, despite the fact that a recall referendum is regarded as a useful tool for controlling government policy, a number of authorities, such as Alexander Hamilton, are of the opinion that the right to recall is the authority of the people, and that it will have negative repercussions for sustainability if the will of the people continues to shift in an unpredictable manner. Hamilton expressed this viewpoint in a statement. the maturation of the decisions that have been taken about policy²⁵.

The urgency of implementing constituent recall of political officials in Indonesia as an effort to strengthen the principle of popular sovereignty

In the realm of constitutional law, the idea of holding a referendum to recall an elected official is not extensively used by nations throughout the globe. However, it can only be found in a few of nations, including Venezuela, Bolivia, and Taiwan, to mention a few. The people will be able to engage in a political process, their involvement will be able to be regarded as supervision, and they will be able to carry out a recall process if there is a vote on recall. However, in certain nations, such as the United States, it is explicitly stated what is meant by the power of recall granted to the people. One such country is the United States, and one example of this is what occurred in the state of California²⁶. To this point, the concept of recall in Indonesia has been described by BN Marbun as a process of withdrawal or revocation carried out by the chairman of a political party to members of the DPR from his party. BN Marbun's interpretation is the only one that has been accepted. Political parties now have the ability to cut, remove, or replace its cadres in the legislative body and replace them with other candidates as a result of this development. According to the second paragraph of Article 239 of the MD3 Law, this indicates that members of parliament may be removed from their seats in parliament on the condition that the requirements outlined in these articles are satisfied. This article raises the point that political parties have complete control over its cadres serving in parliament, which the author identifies as a problem. Because of this, political parties have an incredible amount of strength (determination) in the legislative chamber to carry out PAWs (replacements) of their cadres.

Therefore, it is not inappropriate if Moh. Hatta expresses scathing criticism. Hatta previously said that the power to recall was incompatible with democracy²⁷. When we dig a little further, we find that Indonesia does not truly explicitly govern what is meant by the term recall; nonetheless, in practise, Indonesia is more acquainted with the term Inter-Time Change (PAW). Article 16 paragraph (1) of the Political Parties Law clarifies what is meant by the term "recall." The law states that political parties have or have the right to replace their party members in accordance with the party's AD/ART. This is where the term "recall" is used. In addition to this, the legislation clarifies that political parties possess the right to recall members in the event that the cadre switches parties; hence, political parties possess the right to recall the member in question. Because of this, members of parliament were expelled from the chamber where they had been serving. In Indonesia, the recall privileges granted to political parties are often seen as the "hand of god" for the country's members of parliament. Therefore, it becomes more difficult for a member of parliament to speak out for the interests of the general public, and they are more likely to speak up for the interests of their own political party. Therefore, this leaves the door open for political parties to misuse their authority against each and every one of its members who have been elected to positions in parliament²⁸. Article 22B of the Constitution of 1945 provides, "that members of the DPR may be removed from their responsibilities, with circumstances and processes defined by law." When seen from the perspective of a hierarchical legal foundation, the grounds for replacing or dismissing members of the DPR are governed in this article.

This article also outlines the procedures that must be followed. Several laws have provisions that control the legal products that further regulate the techniques, procedures, and circumstances for the creation of PAW for each individual member of the DPR. The rules that are now in force, as well as the reference, may be found in Law Number 17 of 2014 about the MPR, DPR, DPD, and DPRD (hence referred to as the MD3 Law), which applies to all PAW. Despite the fact that three (three) amendments have been made to the MD3 Law, as stipulated in Law number 42 of 2014, Law number 2 of 2018, and Law number 13 of 2019, none of the articles in the PAW Regulations have been amended as a result of these three amendments. The following is stated in line with the MD3 Law: In addition, members of the DPRD also have the right to be replaced in their positions. Article 241 of the MD3 Law makes a reference to this fact. It is generally stated that members of the DPRD may be removed from their positions if they satisfy the requirements that are outlined in Article 406 of the MD3 Law. The method for this is for the party chairman to submit a

submission to the chairman of the DPRD, and then the submission will be sent to the governor. The governor will then provide the affected member of the DPRD a letter of formal dismissal, which will be addressed to them according to the name listed in the letter of decision. It is essential to emphasise that the governor does not become involved in the inner workings of the state; rather, the governor just issues decrees or merely puts things in writing²⁹.

However, on the other hand, members of the DPR can file a lawsuit against their dismissal which they feel is unfair and this lawsuit is directed against political parties, as stated in Article 241 of the MD3 Law. However, resolving recall disputes is often considered very complicated. This is because party members must go through a consultation procedure with internal party administrators or party leaders first. If this is permitted, the party member can file a lawsuit by adjusting the substance of the civil or constitutional lawsuit³⁰. In other words, political parties have enormous authority because they can precede the principle of due process of law so that it does not rule out the possibility that political parties will act arbitrarily (abuse of power) against their cadres who file lawsuits. Based on the above, Indonesia should look again at the concept recalls. Referendums are an alternative way to fulfill people's sovereignty, which up to now has been felt to be taken over by the interests of political parties or oligarchs. As stated by Iswatun Hasanah in his writing, why the right of recall must be given to citizens. Among them are:³¹ To begin, there are no well-defined guidelines for how a political party might initiate the process of recalling members of parliament. Second, the recall mechanism that political parties have put in place is in direct opposition to the idea that the people should have ultimate control over their government. Third, there is the possibility of extending restitution rights to political parties that do not place an emphasis on the concept of the preeminence of the law. Fourth, it is noted that the power to recall that is possessed by political parties is unconstitutional for the party, which results in constraints on the activities of the DPR and the DPRD.

The definition of the temporary replacement or recall procedures or the term PAW for DPR members in the MD3 Law Articles 239 to Article 245 does not yet embody the ideals of Pancasila justice, which results in legal confusion. This is based on the notion of popular sovereignty. The principle of justice, which is rooted in the Pancasila, refers to a fair and civilised humanity. More specifically, it seeks to humanise people by seeing them in their social context. And social justice for all of Indonesia's population, namely equitable wellbeing for all of Indonesia's population in the form of justice and a reflection of other guiding values. The DPR and DPRD institutions are the ones that, for the most part, are responsible for putting this PAW mechanism into action. This is due to the fact that members of these two institutions have contacts with political parties that are in charge of putting PAW into action³². Concerning the idea of recall, it has been subject to a significant amount of criticism due to the fact that it is solely based on the requirements of the party chairman acting alone in the process of replacing members in parliamentary seats. Obviously, in this situation, it is very subjective, and there is a lack of consideration and consideration of the interests of the people, which is a significant departure from the idea of popular sovereignty³³. After the general election, it is possible to draw the conclusion that the people, who are the ones who wield sovereignty over their representatives, have no authority over those representatives. Recall by political parties resulted in members of the DPR not receiving recognition, security, protection, and legal certainty as well as fair treatment in carrying out their constitutional duties as members of the DPR.

This is based on Article 28D paragraph (1) of the 1945 Constitution and Article 12 letter (b) of Law no. 2 of 2011 concerning Political Parties, which is titled "Expulsion from a party due to violations of the articles of association and bylaws," and it is reaffirmed in Article 85 Paragraph (1) of The Constitution from 1945 serves as the foundation for its power³⁴ in order to implement democracy in accordance with national goals and the interests of the people within the framework of the Unitary State of the Republic of

Indonesia³⁵. If a person who is a member of one party becomes a member of the DPR and then announces his departure from the party that supports him, then the involvement of parties in the election of members of the DPR and DPRD, as provided in Article 22E Paragraph 3 of the 1945 Constitution, is legally justifiable and legitimate. This is the case since the DPR Constitution mandates that parties play a role in the election of members of the DPR and DPRD. Additionally, it was suggested that he be removed from the DPR. However, if the grounds given by a political party to remove its members from the DPR violate the political party's AD/ART Law, then this cannot be instantly justified without going through a thorough legal procedure or without a due process of law mechanism. This is because the withdrawal of members from the DPR is a violation of due process of law³⁶.

Obstacles in implementing constituent recall of political officials in Indonesia as an effort to strengthen the principle of popular sovereignty

Jimly Asshiddiqie has a view about the right of recall, and he has argued that in order to have a genuine democratic system, the system of "party recall" must be eliminated and replaced with a system of "constitutional recall." Members of the Democratic Party who hold positions as representatives of the people cannot be removed from such posts unless they perform illegal activities, break moral standards, resign from office, or pass away while they are still serving their terms in office. A person who is a member of the Democratic Party cannot be removed from office by the leadership of his party for reasons that include disagreements with the leadership of his party or for other reasons that are in direct opposition to the concept of the sovereignty of the people who elected him. In addition, after the judgement of the Constitutional Court, members of parliament from the Democratic Party are now selected according to the vote of the majority³⁷. As a result, from a philosophical and legal perspective, the concept of popular sovereignty in Article 1 paragraph 2 of the 1945 Constitution, which is implemented according to the Constitution in relation to Interim Replacement (PAW), must not be interpreted as changing to the rights and authority of political parties, but rather to the full rights of the people. In a democratic nation, the people are the holder of the supreme power.

To be able to successfully implement the constituent recall system as part of the Interim Replacement (PAW) system in Indonesia, there are still a number of challenges that must be overcome, and this fact is something that must be recognised. One of them is a legal loophole that dates all the way back to the Constitution of 1945; specifically, it can be found in Articles 28 and 28E, which indicate that "freedom of organisation and assembly, expressing opinions vocally and in writing, and so on is established by law." This provision was included in the Constitution at the time it was written. At that moment, political parties may be granted the right, through the law-making process, to remove its members who are also members of the DPR. This authority may be granted even in the absence of legal procedures such as those found in the judicial system. In reply, political parties use the excuse and argument that political parties have a place (status) and an important function (role) in every nation that adheres to democracy in order to take advantage of the constitutional loopholes that have been outlined above to the greatest extent feasible. Aside from that, Schattscheider is credited for coining the phrase "the sovereignty of the people is the sovereignty of the party itself." This axiom asserts that political parties are what gave rise to democracy, which in turn fortifies political parties to the point where they are able to operate as the central bearers of the mandate of the people.

As a result, the second component, which is known as the will of political officials in parliament (also known as political will), is a deciding factor that might be the source of impediments in the process of putting the constituent recall system into place in Indonesia. It seems as if Article 28E of the Constitution of 1945 can be interpreted in an irresponsible manner, which leads to the sovereignty of the people becoming the sovereignty of political parties in the form of an open legal policy concept. In the end, it is the political party that has the full right to dismiss legislative members in parliament. This seems to be a possibility. Members of parliament who are in actuality party cadres are elected to legally occupy seats in the

DPR not because the party picks them to fill those seats; rather, they are chosen because the majority of the people voted for them. At the DPRD level alone, a single member is responsible for a sizeable number of constituents; it may take thousands of votes to get legally elected as a member of parliament. If the decision to invalidate the votes of the majority of people is made by the head of a single political party, then the idea of popular sovereignty is reduced to nothing more than a written rule, which does not have the same significance as before. -very.

IV. CONCLUSION

In a democratic state, the implementation of the idea of popular sovereignty as a whole is the natural and logical next step. Under this theory, the people are granted the authority and right not only to decide who is deserving of being elected during the ongoing general election contestation, but they also have the right to supervise in the form of recall rights for representatives. This is the logical consequence of having a democratic state. individuals who should be removed from their positions in parliament because they are no longer able to effectively represent the interests of the general public. Because political parties are the only forum that can nominate people to sit in parliament in the competition for the election of candidates for legislative members (at this point, the people do not have access), it is appropriate in accordance with the principle of the sovereignty of the people.

The right of recall is given directly to the people either by means of a referendum as occurred in the United States or by other methods deemed adequate. Aside from that, one must be aware of the fact that the implementation of the constituent recall system has a number of challenges. One of these challenges is the possibility of an interpretation of the Constitution of 1945, which delegated the regulation of recall to the legislation. At this moment, the political will of political parties is the following impediment that exists, and it is an obstacle that prevents the formulation of legislation related recall rights.

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