

## **Authority of Representatives to Represent the Government to Apply for the Dissolution of Political Parties in the Constitutional Court**

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**Abstract:** The research aims to: (1) analyze, and discover the nature of the Attorney General's authority representing the government in submitting applications for the dissolution of political parties in the Constitutional Court; (2) analyzing, as well as finding legal arrangements for implementing the authority of the Prosecutor's Office on behalf of the government in submitting applications for the dissolution of political parties in the Constitutional Court; (3) analyze and find the forms of criminal liability and legal liability for the dissolution of political parties in the Constitutional Court by the Prosecutor's Office. This research is a normative (doctrinal) legal research with legislation approach, case approach, comparative approach, and conceptual approach to legal material collected through library studies and interviews that are simple in nature and then analyzed using content analysis methods in series with grammatical, systematic interpretation methods extensive and teleological.

**Keywords:** Authority, Prosecutors' Office, Dissolution of Political Parties, Constitutional Court.

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### **I. INTRODUCTION**

This paper is a representation of the writer's anxiety as prosecutors, legal academics and legal practitioners who see the reality of the Indonesian state as a democratic state of law with political parties that have a noble duty to bridge the people and the government in order to prosper democracy but instead show the rampant actions of political parties through the management of political parties and members of political parties who are either legislative officials, executive officials, or judicial officials, commit criminal acts of corruption for the benefit of political parties. Including law enforcement that only touches *natuurlijk* person without suing political parties as *recht* person. The reality of the democratic rule of law is increasingly complicated by the way of judging the Republic of Indonesia Attorney's institution (hereinafter referred to as the Prosecutor's Office) as a government agency and law enforcement agency (dual obligation) that has not responded to legal enforcement Article 30 paragraph (2) of Law 16/2004 jo. Article 68 paragraph (1) of Law 24/2003 jo. Article 3 paragraph (1) of PMK 12/2008 which gives attribution authority to the Government which is represented by the President as the sole legal standing of the applicant may assign the Attorney General through a special power of attorney to represent the government in submitting an application for the dissolution of political parties in the Constitutional Court against political parties carrying out activities of political parties that are in conflict with the 1945 Constitution of the Republic of Indonesia or the consequences thereof are in conflict with the 1945 Constitution of the Republic of Indonesia; or ideology, principles, goals, programs of political parties contrary to the 1945 Constitution of the Republic of Indonesia;<sup>1</sup> or adhere to and develop and spread the teachings or understandings of communism/Marxism-Leninism.<sup>2</sup>

In concerto, there is no Prosecutor's regulation or instructions for implementing the authority of the Prosecutor's Office representing the government in applying for the dissolution of political parties in the Constitutional Court. In addition, there are still weak legal arrangements for the dissolution of political parties, especially the reasons for dissolution in Law 2/2008 which are in harmony with Law 23/2003 and PMK

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<sup>1</sup>*Vide* Article 68 paragraph (2) of the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court *in conjunction with* Article 2 of the Constitutional Court Regulation.

<sup>2</sup>*Vide* Article 40 paragraph (5) of the Law of the Republic of Indonesia Number 2 of 2011 concerning Political Parties.

12/2008. This has the effect of not maximally strengthening the authority of the Prosecutor's Office in the procedure for dissolving political parties in the Constitutional Court. Potential to degrade the authority to dissolve political parties which is an integrative and exclusive authority if no strengthening of the legal sub-legal or legal structure of the Prosecutor's Office is conducted.

Prior to this writing, the author did not get the results of research examining the problem of the authority of the Prosecutor's Office representing the government in applying for the dissolution of political parties in the Constitutional Court because the Prosecutor's Office had not normalized the regulations for implementing legal assistance by the Prosecutor's Office in the case of dissolving political parties in the Constitutional Court.

Based on the preliminary explanation, the object of this writing is whether the nature of the Attorney's authority represents the government in submitting a request for dissolution of political parties in the Constitutional Court, how does the authority of the Prosecutor's authority represent the government in applying for the dissolution of political parties in the Constitutional Court, as well as the extent to which political parties are asked for criminal liability and accountability of the constitution in the Constitutional Court by the Prosecutor's Office.

## **II. STATEMENT OF THE PROBLEM**

1. Does the nature of the Attorney's authority represent the government in applying for the dissolution of political parties in the Constitutional Court?
2. How do the legal arrangements for implementing the authority of the Prosecutor's Office represent the government in submitting applications for the dissolution of political parties in the Constitutional Court?
3. To what extent are criminal liability and legal liability for the dissolution of political parties in the Constitutional Court by the Prosecutor's Office?

## **III. THEORETICAL FRAMEWORK**

### **A. Theory Review**

#### **1. Theory of Democratic Laws**

When the Indonesian people proclaimed their independence 73 (seventy-three) years ago, which is precisely on August 17, 1945, since then Indonesia has also declared itself a democratic rule of law. The constitutive declaration is still valid today with the constitutional norms in Article 1 paragraph (2) of the 1945 Constitution which states that sovereignty is in the hands of the people and is implemented based on the constitution, and Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a country law. As a state that adheres to the people's sovereignty and the rule of law, Indonesia makes law and democracy an integral part that cannot be separated as one of the theories that underlies the legitimacy of power in carrying out a trustful government for the people's welfare. Democracy and the rule of law are two conceptions of the mechanism of power in running the wheels of state government. The two conceptions are interrelated to one another and cannot be separated, because on one side democracy provides the basis and mechanism of power based on the principle of equality and equality of human beings, on the other hand the rule of law provides a benchmark that governing in a country is not human, but law.<sup>3</sup> In this research, the theory of democratic rule of law is justified as a result of a combination of democratic theory and rule of law theory.

#### **2. Residue Theory**

The residual theory is closely related to the history of the birth of administrative law. It can be seen from its history that administrative law has only arisen since the separation of state power into three types, so that the field of administrative law regulates outside the legislative and judicial powers which means not only executive power, but broader than that.<sup>4</sup> Furthermore, Van Vollenhoven in his residual theory divides state power into 4 (four) branches as follows:<sup>5</sup>

a. Regelaarsrecht/The Law Of The Legislative Process. The function of regulating is a duty to obtain or obtain all legislative results in a material sense. The results of this regulatory function are not laws in the formal sense (made by the President and the House of Representatives), but laws in the material sense that every regulation and stipulation made by the government has a binding capacity for all or part of the population of the region from a country.

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<sup>3</sup>Muntoha. "Demokrasi dan Negara Hukum." *Jurnal Hukum Ius Quia Iustum, Universitas Islam Indonesia* 16, no. 3 (2009): p. 379.

<sup>4</sup>Nasution, Bahder Johan. "Pemahaman Konseptual tentang Hukum Administrasi Negara dalam Konteks Ilmu Hukum." *Jurnal Demokrasi, Universitas Negeri Padang* 6, no. 1 (2007): p. 18.

<sup>5</sup>Kansil, C. S. T. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka, 1986, p. 447.

b. Bestuursrecht/The Law Government/Governance Law. In a modern country, the bestuur function is to have a very broad task, not only limited to implementing the law. The government has intervened in matters of public life, both in the economic, socio-cultural and political fields.

c. Justitierecht/The Law Of Administration Of Justice/Judicial Procedure Law. The justitie function is a repressive oversight function which means that this function carries out something concrete so that the dispute can be resolved based on the rule of law as fairly as possible.

d. Politierecht/The Law Of The Security Administration/Police Law. Politierecht is a function to carry out preventive supervision, which is to force the inhabitants of an area to obey the law order and to take precautions (preventive), so that the order in the community is maintained.

### **3. Theory of Authority**

In line with the main pillar of the rule of law, namely the principle of legality (legalities beginselen or wetmatigheid van bestuur), power in a country must be limited by legal regulations in order to have legitimacy from the people. Power that is limited by law in state administrative law is called authority.<sup>6</sup> The authority has an important position in the study of constitutional law and administrative law as stated by F.A.M. Stroik and J.G. Steenbeek that "het begrip bevoegdheid is and also een kembergrip in het staats-en administratief recht".<sup>7</sup> The terms authority or authority are equated with "authority" in English and "bevoegdheid" in Dutch. Authority in the Black's Law Dictionary is defined as legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties. (Authority or authority is legal power, the right to rule or act; the right or power of public officials to comply with the rule of law within the scope of carrying out public obligations).<sup>8</sup> "Bevoegdheid" in terms of Dutch Law, Philipus M. Hadjon gives notes relating to the use of the terms "authority" and "bevoegheid". The term "bevoegheid" is used in the concept of private law and public law, while "authority" is always used in the concept of public law.<sup>9</sup>

### **4. Utilistic Theory**

Starting from the use of the utilitarian name in Latin "*utilis*" which means useful.<sup>10</sup> Utilistic flow is a practical moral teaching that considers that the purpose of law is merely to provide maximum benefit or happiness for as many citizens as possible. Handling is based on social philosophy that every citizen seeks happiness and law is one of the tools.<sup>11</sup>

### **5. Political Party Theory**

#### **a. Political Linkage Theory**

According to Alistair Clark, a well-known British politician stated that political parties have a role to link (linkage) between the people and government. There are at least six related models that are played by political parties. First, participatory circle, when the party acts as an agent in which political parties can participate in politics. Second, electoral linkage, where party leaders control various elements in the electoral process. Third, responsive environment, when parties act as agents to ensure that government officials act responsive to voters. Fourth, clientelistic environment, when the party acts as a means to obtain votes. Fifth, directive circles, namely when the ruling party controls the actions of citizens. Sixth, organizational environment, which is when there is a relationship between party elites and organizational elites can mobilize or "undermine" the support of a political party.<sup>12</sup>

#### **b. Theory of Function of Political Parties**

In accordance with the theoretical basis of political parties and their origin and development, there are several functions of political parties put forward by experts. These functions in general are: 1) a means of

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<sup>6</sup>Mulyosudarmo, Suwoto. *Kekuasaan dan Tanggung Jawab Presiden Republik Indonesia: Suatu Penelitian Segi-Segi Teoritik dan Yuridis Pertanggungjawaban Kekuasaan*. Surabaya: Airlangga University Press, 1990, p. 30.

<sup>7</sup>Stroink, F. A. M., and J. G. Steenbeek. *Inleiding in Het Staats-En Administratief Recht*. Alphen aan den Rijn: Samson H.D. Tjeenk Willink, 1985, p. 26.

<sup>8</sup>Black, Henry Campbell. *Black's Law Dictionary*. Minnesota: West Publishing, 1990, p. 133.

<sup>9</sup>"Bevoegdheid" in terms of Dutch Law, Philipus M. Hadjon gives notes relating to the use of the terms "authority" and "bevoegheid". The term "bevoegheid" is used in the concept of private law and public law, while "authority" is always used in the concept of public law.

<sup>10</sup>Erwin, Muhamad. *Filsafat Hukum: Refleksi Kritis Terhadap Hukum*. Jakarta: PT. Raja Grafindo Persada, 2012, p. 179.

<sup>11</sup>Ali, Achmad. *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence)*. Vol. 1, Jakarta: Kencana Prenada Media Group, 2009, p. 272.

<sup>12</sup>Clark, Alistair. "Parties and Political Linkage: Towards a Comprehensive Framework for Analysis." In *Annual Conference of Political Studies Association*. Florida: University of Leicester, 2003, p. 10.

political communication; 2) means of political socialization; 3) political recruitment; and 4) conflict managers.<sup>13</sup> Almost the same as these functions, Almond and Powell put forward three functions of political parties namely political recruitment, political socialization, and articulation and aggregation of interests (interest articulation and aggregation).<sup>14</sup> Meanwhile, Friedrich put forward the functions of political parties as follows: 1) selecting future leaders; 2) maintaining contact between the government, including the opposition; 3) representing the various groups in the community, and; 4) integrating as many of the groups as possible.<sup>15</sup>

## **6. Corporate Criminal Liability Theory**

According to Sajipto Rahardjo, a corporation is interpreted as a body created by law, which consists of a "corpus", namely its physical structure and into which the law is incorporated the "animus" element that makes the body have a personality. Because the legal entity is a legal creation, except for its creation, its death is also determined by law.<sup>16</sup> Whereas corporate understanding according to the Black's Law Dictionary, is defined as: "An entity (usually a business) having authority under the law to act as a single person is distinct from the share holders who own it and have rights to issue stock and exist indefinitely, a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a distinct personality from the natural person who makes it up, exists indefinitely apart from them, and has the legal powers that the constitution gives it."<sup>17</sup>

## **7. Theory of Progressive Law**

The birth of progressive law is motivated by responsive law, so in order to explore progressive law, it is first required to know responsive law. The term responsive law is popularized by Philippe Nonet and Philip Selznick in their work entitled "Law and Society in Transition to Responsive Law". The term is used by both of them as a criticism of legal theory that emphasizes the formality side and overrides reality. In Nonet and Selznick's view (as stated by Robert A. Kagan in the introduction to the latest edition of Nonet and Selznick's) law often appears restrictive and very rigid (constricting and rigid).<sup>18</sup> This nature of law is due to the fact that legal theories have been built in a special way, on the theories of implicit authority.<sup>19</sup>

## **B. Concept Review**

### **1. The Constitutional Court of the Republic of Indonesia**

#### **a. History of the Establishment of the Constitutional Court of the Republic of Indonesia**

The establishment of the Constitutional Court cannot be separated from the development of law and the state administration on the testing of legal products by judicial institutions or judicial review.<sup>20</sup> The debate about judicial review has been valued by the founding fathers of the Indonesian nation since the inception of the Republic of Indonesia when Soepomo and Muhammad Yamin discussed the draft constitution of the Republic of Indonesia.<sup>21</sup> At meetings of the Indonesian Independence Preparatory Agency (BPUPKI) to prepare for the Indonesian Law, Soepomo and Muhammad Yamin briefly discussed the need to establish a special court outside the Supreme Court.<sup>22</sup>

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<sup>13</sup>Budiardjo, Miriam. *Dasar-Dasar Ilmu Politik*. Revisi ed. Jakarta: PT. Gramedia Pustaka Utama, 2003, pp. 163 – 164. Compare with Kusnardi, Moh., and Bintan Regen Saragih. *Ilmu Negara*. Revisi ed. Jakarta: Gaya Media Pratama, 2000, p. 269.

<sup>14</sup>Almond, Gabriel A., and G. Bingham Powell Jr. *Comparative Politics: A Developmental Approach*. Boston: Little Brown & Co., 1996, pp. 114 – 127. Compare with Clark, Alistair. 2003. *Op. Cit.*, p. 9.

<sup>15</sup>Friedrich, Carl Joachim. *Constitutional Government and Democracy: Theory and Practice in Europe and America*. Massachusetts: Blaisdell Publishing Co., 1967, p. 442.

<sup>16</sup>Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT. Alumni, 1986, p. 110.

<sup>17</sup>Black, Henry Campbell. *Black's Law Dictionary*. Minnesota: West Publishing.

<sup>18</sup>Robert. A. Kagan, Introduction to Transaction Edition, in Nonet, Philippe, and Philip Selznick. *Law and Society in Transition: Toward Responsive Law*. New Jersey: Transaction Publishers, 2001, p. 8.

<sup>19</sup>For example, before studying Constitutional law and State Administrative Law, a law student is introduced to the theory of sovereignty. Most likely what Nonet and Selznick meant by that authority was sovereignty.

<sup>20</sup>The term judicial review is related to the Dutch term "toetsingsrecht", but both have differences, especially in terms of judges' actions. Toetsingsrecht was limited to the judge's evaluation of legal products, while the cancellation was returned to the institution that formed it. In fact, in the concept of judicial review in general, especially in Continental European countries, including judges' actions to cancel the intended legal rules. In addition, the term judicial review is also related but must be distinguished from other terms such as legislative review, constitutional review, and legal review. In the context of a judicial review conducted by the Constitutional Court, it can be called a constitutional review because the touchstone is the constitution.. Vide, Asshiddiqie, Jimly. *Model-Model Pengujian Konstitusional di Berbagai Negara*. Jakarta: Konstitusi Press, 2005, pp. 6 – 9.

<sup>21</sup>Martosowignyo, Sri Soemantri. *Hak Uji Material di Indonesia*. Bandung: PT. Alumni, 1997, pp. 71 – 72.

<sup>22</sup>Nurchayanto, Agung Nadhi. "Sejarah Terbentuknya Mahkamah Konstitusi Indonesia Sebagai Pengawal Kosntitusi." <http://www.jdih.setjen.kemendagri.go.id/filesart/sejarah%20terbentuknya%20mahkamah%20konstitusi.docx>. p. 5.

## **b. Legal Arrangements of the Constitutional Court of the Republic of Indonesia**

In the development of the amendment, the idea of establishing a Constitutional Court received a positive response and became one of the material agendas for amending the constitution decided by the People's Consultative Assembly. Through an in-depth and meticulous process, the idea of establishing a Constitutional Court came true with the passing of Article 24 paragraph (2) and Article 24C of the 1945 Constitution of the Republic of Indonesia as part of the third amendment to the 1945 Constitution.<sup>23</sup>

## **2. Attorney General's Office of the Republic of Indonesia**

### **a. Position of the Prosecutor's Office in the 1945 Constitution of the Republic of Indonesia**

The Attorney General's Office of the Republic of Indonesia is a state and government institution that exercises state power in the field of prosecution and other authorities based on law. Not a single country does not recognize the significance and magnitude of the role of the Prosecutor's Office led by the Attorney General as the highest public prosecutor in a democratic country. Even an authoritarian state has never been reported that someone has abolished the position of the Prosecutor's Office. In other words, dictatorial countries also need the Prosecutors' Office, both to strengthen the legitimacy of their power and to enforce laws and regulations.<sup>24</sup>

### **b. Prosecutors' Office as a Government Institution**

As explained earlier, Law 16/2004 states that the Attorney General's Office as a government agency carries out an executive function. The Attorney General as the leader and the highest person in charge of the prosecutor's office who leads, controls the implementation of the duties and authority of the prosecutor's office, is a state official who is appointed and dismissed by the President. In line with the position of the Prosecutor's Office as a government agency, according to Prof. Yusril Ihza Mahendra,<sup>25</sup> The Attorney General's position as a state body (*staatorgan*) in the 1945 Constitution basically continues what has been regulated in the *Indische Staatsregeling*, which is a kind of constitution of the Dutch East Indies, which places the Attorney General's Office next to the Supreme Court. While administratively, both the Prosecutor's Office and the court are under the Ministry of Justice. So, in a meeting of the Indonesian Independence Preparatory Committee (PPKI) on 19 August 1945.

### **c. The Prosecutors' Office as a Law Enforcement Institution**

As explained earlier, the Prosecutor's Office, apart from being a government agency, also exercised the power of prosecution that was independent of any intervention which in fact was a judicial function. As part of the judicial body that enforces the law, the Prosecutor's Office has the following authority:

Article 30

(1) In the criminal field, the prosecutor's office has the following duties and authorities:

- a) prosecute;
- b) implement the determination of judges and court decisions that have permanent legal force;
- c) supervise the implementation of conditional criminal decisions, supervision criminal decisions, and conditional release decisions;
- d) investigating certain criminal acts based on the law; (criminal acts of corruption and gross violations of human rights)
- e) complete certain case files and to do so can carry out additional examination before it is submitted to the court which in its implementation is coordinated with the investigator.

Article 31

The prosecutor's office may ask the judge to place a defendant in a hospital, mental care facility, or other appropriate place because the person concerned is unable to stand on his own or is caused by things that could endanger others, the environment, or himself.

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<sup>23</sup>Qamar, Nurul. "Kewenangan Judicial Review Mahkamah Konstitusi." *Jurnal Konstitusi, Universitas Riau* 1, no. 1 (2012): p. 12.

<sup>24</sup>Surachman, EQ. RM., and Jan S. Maringka. *Eksistensi Kejaksaan: Dalam Konstitusi Di Berbagai Negara*. Jakarta: Sinar Grafika, 2015, p. 71.

<sup>25</sup>Yusril Ihza Mahendra, Attorney General Position and Position of Attorney General in the Presidential System Under the 1945 Constitution, as contained in Azhary, Muhammad Tahir. *Beberapa Aspek Hukum Tata Negara, Hukum Pidana, dan Hukum Islam*. Jakarta: Kencana Prenada Media Group, 2012, p. 4. See also <https://parismanalush.blogspot.com/2014/09/kedudukan-kejaksaan-dan-posisi-jaksa.html>, accessed July 30, 2019.

#### **d. Position of Attorney General of the Republic of Indonesia**

Normatively, the Attorney General is the leader and the highest person in charge of the Indonesian Attorney General's Office, which leads, controls the execution of the duties and authority of the prosecutor's office.<sup>26</sup> In particular :

(1) The Attorney General has duties and authorities:

- a. establish and control law and justice enforcement policies within the scope of duties and authority of the prosecutor's office;
- b. streamlining the law enforcement process provided by the law;
- c. setting aside matters in the public interest;
- d. submit an appeal in the interest of law to the Supreme Court in criminal, civil, and state administrative cases;
- e. may submit legal technical considerations to the Supreme Court in the appeal of criminal cases;
- f. prevent or deter certain people from entering or leaving the territory of the Unitary Republic of Indonesia because of their involvement in criminal cases in accordance with statutory regulations.

(2) The Attorney General gives permission to suspects or defendants to seek treatment or undergo treatment in a domestic hospital, except under certain circumstances treatment can be done abroad.

### **3. Dissolution of Political Parties**

#### **a. Understanding Political Parties**

In terms of etymology, according to Laica Marzuki, the word party comes from the Latin *pars*, which means part. Because only one part, brings the consequence of understanding the other parts. Therefore, if there is only one party in a country, it is not in accordance with the etymological meaning of the party itself.<sup>27</sup>

The understanding of the etymological side was also expressed by Jimly Asshiddiqie. Party comes from the root *part* which means part or class. The word party refers to the group as a grouping of people based on certain similarities such as goals, ideology, religion, and even interests. The grouping is shaped in general organization, which can be distinguished according to the area of activity, such as social organizations, religious organizations, youth organizations, and political organizations. In its development, said the party is more associated with political organizations, namely community organizations engaged in politics.<sup>28</sup>

#### **b. Formation of Political Parties**

Jimly Asshiddiqie stated that four types of legal entities can be distinguished, namely:<sup>29</sup>

1. State institutions formed with a view to the public interest can have the status of legal entities that represent the public interest and carry out activities in the field of public law.
2. Legal entities that represent the public interest and carry out activities in the field of civil law.
3. A legal entity that represents the civil interests of its founder but carries out activities in the field of public law.
4. Legal entities that represent the civil interests of its founders and carry out activities in the field of civil law.

#### **c. Political Party Funding**

In relation to political party finance, there are 2 (two) laws governing it, namely the Law of the Republic of Indonesia Number 2 of 2008 concerning political parties (hereinafter referred to as the Political Party Law), as amended by Law Number 2 of 2011 (hereinafter referred to as the Law on Political Parties) and Law of the Republic of Indonesia Number 8 of 2012 concerning Election of Members of the DPR, DPD and DPD (hereinafter referred to as the Law on DPR, DPD, DPD). Both of these laws regulate completely different things related to the finances of political parties, because the objects and objectives are different. The political party law regulates how political parties can obtain their financial resources, financial expenditure objectives, how to manage and report their finances and oversight of the financial statements of the political parties themselves in relation to the institutional political parties themselves in carrying out their functions as political parties (keep in mind that not all Political parties are election participants).

#### **d. Dissolution of Political Parties**

Dissolution of political parties in this study is forced dissolution caused by actions, legal decisions, policies, or state regulations that result in the loss of the existence of political parties as legal subjects with rights

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<sup>26</sup>*Vide* Article 18 paragraph (1) of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

<sup>27</sup>Safa'at, Muchamad Ali. "Pembubaran Partai Politik di Indonesia (Analisis Peraturan Hukum dan Praktik Pembubaran Partai Politik 1959 – 2004)" *Disertasi*, Universitas Indonesia, 2009, p. 31.

<sup>28</sup>*Ibid.*, p. 32.

<sup>29</sup>Asshiddiqie, Jimly. *Kemerdekaan Berserikat, Pembubaran Partai Politik, dan Mahkamah Konstitusi*. Jakarta: Konstitusi Press, 2005, pp. 84 – 85.

and obligations. Dissolution results in a change in the legal existence of a political party from existing to non-existent. Forced dissolution in this study includes dissolution carried out by state authorities either directly in the form of legal decisions, or indirectly through rules or policies that result in the event of the dissolution of political parties.

### **III. DISCUSSION**

#### **A. The Nature of the Authority of the Prosecutors' Office Representing the Government in Filing Applications for Dissolution of Political Parties in the Constitutional Court**

The Attorney General's Office is the only law enforcement agency born from the womb of the Indonesian nation. In contrast to the Police which etymologically comes from the word 'police' in Dutch 'politie' which takes the Latin 'politia' which comes from the Greek 'politeia' which means city residents or city government, and judges who etymologically come from the word "hakima" in Arabic which means the person who decides the punishment for the prosecuted party. The Prosecutors' Office existed before Indonesia's independence, during the Majapahit Kingdom, known as the 'Adhyaksa' who led the 'Dhyaksa' who each served to carry out the king's orders, confronting those who committed crimes before the king to be tried, and gave legal-political considerations -economics-war tactics to the King. The term adhyaksa and dhyaksa derived from Sanskrit language is what later made the Prosecutor's Office. In its historical development, namely the Prosecutors' Office in the Majapahit Kingdom and the Mataram Kingdom with Adhyaksa and Dhyaksa officials, during the Dutch East Indies government with the Openbaar Minister and Officer Van Justitie institutions, the Japanese colonial era with the position of Saikoo Kensatsu Kyoku, and the historical development of the laws and regulations governing the Prosecutor's Office until the enactment of Law 16/2004<sup>30</sup> authority of the Prosecutor's Office in several countries namely Malaysia, Singapore, Laos, the Democratic People's Republic of Korea, the United States, Japan, Sweden, the Netherlands, France, Germany, Brazil, in general there are 5 (five) principles of authority held by the Prosecutor's Office in the perspective of jurisdiction, namely : 1) Representing the government to investigate, prosecute and implement judges' decisions in criminal justice; 2) Representing the government in the settlement of cases in civil justice and state administration, 3) Government legal advisors, 4) Supervising the implementation of law by the government, community organizations, and the public; and 5) Carry out national development. In Indonesia itself, in carrying out the five principles of authority related to Law 16/2004, the Attorney General's Office has at least 8 (eight) prototype prosecutors as part of the Attorney's law, namely intelligence prosecutors, investigating prosecutors, research prosecutors, public prosecutors, state attorney prosecutors, executors prosecutors, asset recovery prosecutors, all of which are led by the Attorney General in accordance with the attribution authority given by the legislation.<sup>31</sup>

Thus, the Prosecutors' Office is a competent government agency to represent the government in submitting applications for the dissolution of political parties in the Constitutional Court. The authority of the Prosecutor's Office representing the government in submitting applications for the dissolution of political parties in the Constitutional Court is an integrative authority that combines the functions of investigation, investigation, prosecution, execution of court decisions, asset recovery which is the domain of the criminal justice system with the function of state lawyers as representatives of the government in proceedings in the Mahkamah Constitution is the domain of the state administrative justice system. Such integrative authority belongs exclusively to the Prosecutor's Office.

The Prosecutor's Office as a government agency and law enforcement agency, for and on behalf of the state and the government has an obligation to uphold a democratic rule of law. Political party crime and unconstitutional political party is an effort to weaken the democratically state of law. On the contrary, the enforcement of criminal law and the submission of applications for the dissolution of political parties in the Constitutional Court is a process of strengthening the Indonesian state as a democratic rule of law.

#### **B. Legal Arrangements Authority of the Prosecutors' Office Representing the Government in Filing Applications for Dissolution of Political Parties in the Constitutional Court**

The Attorney General's Office is a government agency that exercises state power in the field of prosecution and other authorities based on laws which carry out state power independently. Freedom in the sense of carrying out its functions, duties and authority is independent of the influence of governmental power and the influence of other powers. Based on Article 30 paragraph (2) of Law 16/2004, in the field of civil and administrative matters, the Prosecutor's Office with a special power of attorney may act both inside and outside

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<sup>30</sup>Vide Article II Transitional Rules of the 1945 Constitution jo. PP 2/1945, UU 7/1947, UU 19/1948, UU 15/1961, & UU 5/1991.

<sup>31</sup>Effendy, Marwan. *Kejaksaan RI: Posisi dan Fungsinya dari Perspektif Hukum*. Jakarta: PT. Gramedia Pustaka Utama, 2005, pp. 55 – 98. See also, Surachman, EQ. RM., and Jan S. Maringka. *Op. Cit.*, pp. 113 – 406.

the court of law for and on behalf of the state or government. The implementation of the Prosecutor's function in the civil and administrative fields is carried out by the State Attorney<sup>32</sup> to the Deputy Attorney General for Civil and State Administration as one of the Prosecutors' organizations.<sup>33</sup>

Empirically, the Prosecutor's Office representing state and government institutions has taken place at hearings in the Constitutional Court, both in terms of judicial review, disputes over the results of general elections for members of the People's Legislative Assembly, members of the Regional Representative Council, members of the Regional People's Representative Council, and disputes over the authority of the institution. . The Prosecutor's Office that has duties and functions in the field of state administration is the Deputy Attorney General for Civil and State Administration through the State Attorney. Attorney based on a special power of attorney conducts law enforcement and legal assistance or based on a warrant carrying out legal considerations, other legal actions and legal services in the civil and administrative fields. In connection with the case of the dissolution of a political party, the submission of a request to dissolve a political party is part of legal aid activities by the State Attorney. The legal aid referred to is the task of the State Attorney in the case of dissolving political parties representing the government based on a special power of attorney as the petitioner for dissolving political parties. The Prosecutor's profession as a State Attorney is not antinomic to the lawyer profession in Law 18/2003 because there are separate expressive verbis exceptions specified in Article 30 paragraph (2) of Law 16/2004. Moreover, the existence of a State Attorney as a law enforcer is recognized and has long been used in the history of law enforcement in the Dutch East Indies era until now through Article 32 paragraph (1) of Law 31/1999 and Article 30 paragraph (2) of Law 16/2004. The normative historical recognition is the legitimacy of the existence of the Prosecutor's Office through the State Attorney with special powers to act on behalf of the state or government in the field of civil and state administration including as a government representative to act as an applicant in submitting an application for the dissolution of political parties in the Constitutional Court.

### **C. Criminal Accountability and Constitutional Accountability of Political Parties as Legal Entities in the Constitutional Court by the Prosecutor's Office**

Indonesian regulations recognize the form of dissolution of political parties in 3 (three) criteria, namely dissolving themselves on their own decisions, joining themselves with other political parties, and dissolving by the Constitutional Court. The first and second forms of dissolution seem very difficult to expect. Because political parties are formed not to be dissolved or joined by other political parties. Although this is possible as a simplification of political parties that occurred in the new order with Law 3/1975 jo. Act 3/1985. Furthermore, the provisions of Article 48 paragraph (3), paragraph (7) jo. Article 40 paragraph (2) of Law 2/2008 jo. Law 2/2011 and Article 68 paragraph (2) jo. Article 2 of PMK 12/2008 states that political parties can be submitted for dissolution through the decision of the Constitutional Court if:

- 1) The ideology, principles, objectives, and programs of political parties are contrary to the 1945 Constitution of the Republic of Indonesia;
- 2) The political party carries out activities that are contrary to the 1945 Constitution of the Republic of Indonesia and the laws and regulations;
- 3) The political party carries out activities which endanger the integrity and safety of the Unitary State of the Republic of Indonesia;
- 4) These political parties embrace and develop and spread the teachings or understandings of communism/Marxism-Leninism;

Political party crime and its party's unconstitutional political crime are committed by party officials who have a functional position in the party organizational structure that acts for and on behalf of the party or acts in the party's interests, which are based on the party's statutes and by-laws, both individually and together. Political parties can be held criminally liable for an act committed for and/or on behalf of the party if the act falls within the scope of party authority as specified in the articles of association, bylaws, or other provisions applicable to the party concerned or if the act carried out outside the party's authority to claim or be carried out in the interests of the party. To identify the forms of criminal responsibility of political parties as corporations with legal entities that commit criminal acts must prove that the actions of political parties through their management are carried out in a structured, systematic and massive manner, as well as proving the causal relationships of actions and consequences of actions that meet the TSM elements are contrary to 1945 Constitution.

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<sup>32</sup>The term State Attorney is first normalized in Article 31 paragraph (1), Article 33, Article 34 of Law number 31 of 1999, which is intended as an instrument of civil law enforcement with a focus on saving the country's wealth.

<sup>33</sup>Vide Article 5 letter (g) Presidential Regulation of the Republic of Indonesia Number 38 Year 2010 concerning Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia in conjunction with Article 6 letter (g) Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/07/2017 Concerning Organization and Work Procedures The Attorney General's Office of the Republic of Indonesia.



In the perspective of the doctrine of strict liability, political parties can already be convicted if they have been proven to have committed acts that are prohibited by law without having to prove the element of wrongdoing of the criminal offender. The imposition of strict liability doctrine that does not require mens rea is a justification for making political parties liable for carrying out political party crimes and unconstitutional political parties which require mens rea for accountability. Political parties in carrying out criminal acts are always represented by political party management. In this case it acts as an organizational controller, considering that the party cannot possibly be blamed criminally. However, with the birth of the doctrine of strict liability, then criminal liability can be borne by the offender concerned with no need to prove a mistake (intentional or negligence) on the perpetrators. Then to withdraw criminal liability to political parties can be done with accountability using the doctrine of vicarious liability that allows the political party to be held accountable for the actions carried out by the management including the controller of the organization that has the power to carry out party activities. Through this vicarious liability doctrine, political parties cannot avoid criminal liability on the grounds that political parties have delegated political party activities that are legal to the central executive or regional administrators of political parties. In the criminal liability of political parties, the bond between the political party management and the political party itself is very close, so it is rather difficult to identify which actions were carried out by the political party management in order to achieve the objectives of the political party with which actions were carried out by the political party management in order to the interests of the management of the political party itself. This problem can be answered by applying identification theory that emphasizes the directing mind (brain) of the perpetrators of the crime. In perspective, the doctrine of identification, actions or inner attitudes of the central and regional central officials having directing minds can be considered as the attitude of political parties. This means that the inner attitude is identified as a political party and thus political parties can be directly accounted for. Based on the three doctrines of criminal responsibility, it can be seen 3 (three) forms of relations between political parties and their management in relation to the accountability of political parties as follows:

- a. Political parties can only commit criminal acts through their management and to be accounted for, the crime must be carried out by one of the management who is the brain of the company. So it appears that identification theory has a crucial role in proving criminal liability of political parties;
- b. If a criminal offense is committed by an administrator whose actions can be considered to represent a political party as well as his own actions, the political party and the management can be seen in their position as principal and accessory or as joint precepts. Means that both political parties and their management can be accounted for;
- c. If a general chairperson of a political party does not act to prevent a criminal offense from being committed by another board or himself so that it is considered a crime by a political party, then he can be accounted for as an accessory. But it is not an accessory in a crime committed by a political party, but an accessory because it does not prevent the crime. So the criminal liability is an offense omission that is allowing the crime to occur.

Of the 3 (three) forms of relationship between political parties and their management, the difference between the criminal liability system directed at political parties and the accountability directed at the management of political parties can be seen as follows:

- a. The management of political parties as the perpetrators of the crime so therefore it is the management who must bear criminal responsibility;
- b. Political parties as perpetrators of crime, but the management must bear criminal responsibility;
- c. Political parties as perpetrators of crime and political parties themselves must bear criminal responsibility;
- d. The management and political parties are both the perpetrators of the crime and both must bear criminal responsibility;

For points a and point b, only the management of the political parties involved must be responsible if:

- a. The acts are carried out by the management of political parties or members of political parties who are the controllers of political party organizations;
- b. The actions of the management of political parties do not benefit political parties but only benefit individuals;
- c. The actions of the management of political parties are carried out contrary to the aims and objectives of political parties which are regulated in the provisions of the Articles of Association and by-laws of a political party;
- d. The actions of the management of a political party deviate from the functions and duties of a political party.

In addition, in making a political party a criminal offense, one must pay attention to, among others: a) The level of loss or impact resulting from the crime; b) Level of involvement of political party management and/or political party controlling role; c) The length of the criminal act that has been committed; d) The frequency of criminal acts by political parties; e) Forms of misconduct; f) Involvement of public officials; g) The value of law and justice that lives in society; h) Track record of political parties in carrying out their activities; i) The effect of criminal punishment on political parties; and/or j) Cooperation of political parties in handling criminal acts carried out by their management. The elements mentioned above are the logical

consequences of criminal acts committed by political parties that must be realized in a structured, systematic and massive manner.

The imposition of the doctrine of identification, vicarious liability, and strict liability in a political party is solely intended to attract the involvement of political parties through its executives who commit criminal acts to be sanctioned for the actions they have caused.

In proving criminal liability against political parties that commit political parties and unconstitutional political parties, it must prove that the actions were carried out in a structured, systematic and massive manner.

The government as the only legal standing of the applicant who can assign the Attorney General through the Public Prosecutor and Attorney State must be able to prove the structured, systematic and massive criminal acts as the most basic postulates in the evidentiary law namely the *actori incumbit probatio* which means who is suing then it is he who must prove. A number of other related principles are the *incumbit onus probandi actori* which means whoever accuses the person who is obliged to prove. *Ei incumbit probatio qui dicit, non qui negat*, which means that the burden of proof is on the person who sued, not the defendant. *Probandi necessity incumbit ei qui agit*, which means that the burden of proof is delegated to the plaintiff. There is still a principle that says *affirmati non neganti incumbit probatio*, which means proof is mandatory for those who say yes, not those who deny. *Affirmati et probare*, which means the person who said yes, must prove and *reo negare actori incumbit probatio*, meaning that if the defendant does not recognize the claim, the plaintiff must prove. If the petitioner for the dissolution of a political party, namely the Attorney General through the Public Prosecutor and the State Attorney, cannot prove the existence of *dolus premeditatus* as an intrusion of criminal acts committed by a political party in a structured, systematic and massive manner, then the postulate *actore no probante reus absivlatur*, which means if it cannot prove the defendant must be acquitted or the claim or application must be rejected. Proof by the Government through the Prosecutor's Office plays an important role in proving the criminal responsibility of political parties in criminal justice as well as the constitutional accountability of political parties in the Constitutional Court.

#### IV. CONCLUSION

1. The nature of the authority of the Prosecutor's Office to represent the government in applying for the dissolution of political parties in the Constitutional Court is the interest of the state to dissolve political parties that commit acts and consequently contradict the 1945 Constitution. Dissolution of political parties is a mechanism of state administrative justice that is preceded by a criminal justice process that begins with an investigation process so that the dissolution of a political party is a court that integrates functions in the criminal justice system with the constitutional court in the Constitutional Court. Only the Prosecutor's Office as a government agency through the prototype of the Prosecutor which includes the Prosecutors' Intelligence, Investigating Prosecutors, Investigating Prosecutors, Public Prosecutors, State Attorneys Attorney, Executing Prosecutors, Asset Advisors Prosecutors under the Attorney General who is able to carry out the authority to dissolve political parties as an integrative authority based on attributive authority laws and regulations.
2. Based on Article 30 paragraph (2) of Law 16/2004 jo. Article 3 Paragraph (1) of PMK 12/2008, the Prosecutor's Office with a special power of attorney may represent the government at the Constitutional Court because the State Administrative Decree is an embryo of the Decree of the Minister of Law and Human Rights that ratifies a political party as a legal entity of a political party which later becomes a political party. the object of cancellation in the petition to dissolve political parties in the Constitutional Court.
3. To attract criminal liability and legal liability for political parties committing crimes contrary to the 1945 Constitution as a basis for dissolving political parties can use the strict liability doctrine, vicarious liability doctrine, and identification doctrine by means of political parties subject to criminal liability through their executives who commit extra criminal acts. ordinary crime in a structured, systematic and massive manner.

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