

Existence of Party Court in the Settlement of Internal Disputes Political Parties

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Abstract: This study aims to analyze and find the existence of the Party Court as a judicial institution in its function of resolving internal political party disputes, guaranteeing the legal certainty of the decision of the Party Court, and ideally the position of the Party Court in the structure of political parties to guarantee the neutrality and independence of the institution and its membership. This type of research is normative with three problem approaches namely, 1) the statute approach, 2) the conceptual approach, and 3) the political approach. Researchers used content analysis of content analysis of primary, secondary and tertiary legal materials.

Keywords: Party Court, Judicial Institution, Internal Political Party

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I. INTRODUCTION

Political parties become organizations as a medium for the gathering of civil society (political infrastructure) in which cadres through elections can be elected occupying state positions in state institutions (political superstructure).¹ In this position and function, political parties are said to be the main pillars of democracy, because the people's sovereignty is channeled through political parties to govern the government of a country. The government will be good if the political parties in the country are good.

The results of the changes in the election law and political parties, gave birth to a multi-party system, so that people were busy setting up political parties.² Of the many political parties established by citizens to take part in the selection process to become participants in the 1999 elections, the result is that there are 48 political parties that are eligible to participate in the election.

Election institutions are reorganized by presenting an EMB (independent election commission) that is independent, national and permanent. This is intended to design the implementation of democratic elections, based on the principle of direct, general, free, secret, honest and fair elections. The existence of an EMB which is designed to be able to carry out elections independently, honestly and fairly, in turn gives birth to thinking among members of the MPR to carry out direct presidential and vice presidential elections.

Political parties in determining their cadres to occupy positions in government, of course, have an internal mechanism. The mechanism ultimately leads to who has the authority to decide or appoint someone to be nominated for a position in the government. The authority to decide and determine is of course given to the leadership of a political party, as an individual or group that has been chosen by a member of a political party as the organizational controller. Therefore, the existence of political party leaders is very strategic in determining who can be determined to be a state and government official.

The presence of the Party Court is expected to reduce the burden on leaders of political parties in handling internal problems. The Party Court is also expected to be able to effectively and efficiently resolve internal political party disputes.³ Settlement of internal political party disputes using judicial institutions is

¹Maksudi, BeddyIriawan. (2015). *Sistem Politik Indonesia: Pemahaman Secara Teoritik dan Empirik*. Jakarta: Rajawali Pers, pp. 100 – 101.

²The political party and election law that was first produced by the post-reform transitional government is *Undang-Undang Republik Indonesia Nomor 2 Tahun 1999 tentang Partai Politik, and Undang-Undang Republik Indonesia Nomor 3 Tahun 1999 tentang Pemilihan Umum.*

³Laoly, Yasonna H. (2019). *Manajemen Sengketa Partai Politik: Sebuah Ikhtiar Penataan Kelembagaan Politik di Negeri Demokrasi*. Jakarta: PT. Pustaka Alvabet, pp. 214 – 215.

believed to be beneficial for political parties, especially for members of political parties as holders of the highest sovereignty in political parties.⁴

II. STATEMENT OF THE PROBLEM

1. Does the position of the Party Court in Indonesia function as a judicial institution in resolving internal political party disputes?
2. To what extent is the legal certainty of the Party Court decision in resolving internal political party disputes?
3. What is the Ideal concept of the position and composition of the membership of the Party Court in the party management structure to ensure the neutrality and independence of the institution?

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Justice Theory

Plato argued that the substance of justice is goodness, or goodness inherent in justice. Justice can be felt if goodness is sought. The relationship between good and fair is determined by the justice that benefits can be felt, and the usefulness of justice will be realized if goodness can be used or used.⁵

Aristotle in his book *Nicomachean Ethics* (a book that is entirely aimed at justice), put forward the concept of justice which means equality, then the similarity in implementation is divided into two things namely distributive and corrective.

Distributive justice in Aristotle's discussion is further divided into numerical and proportional justice. Numerical justice is the distribution or giving the same amount to each person, while proportional justice is a division based on performance achievements (achievements) of each person. The implementation of distributive justice becomes an obligation for the leaders of a government.

Corrective justice is justice that requires efforts to correct or correct mistakes that occur, which result in a loss that results in unfair conditions between one and the other. The function of upholding corrective justice is more carried out by the judiciary in deciding a case, thus recovering, returning and/or compensating the loss suffered by a person or group of people due to the actions of someone or a group of others.⁶

Hans Kelsen described the essence of justice as social happiness, in the sense that the situation can be said to be fair if it can be accepted with pleasure or happiness by many people. Happiness that is only felt individually can not be said to be fair, because it has not been felt by many people (social). In the social order there is a reciprocal relationship (interaction) between one individual with other individuals. Kelsen said that humans are just if their behavior is in accordance with the norms of the social order that are supposed to be fair.⁷

2. Legal Certainty Theory

Legal certainty is the legal goal that is most easily realized in the process of establishing an affair in public life, be it in the form of the stipulation of written rules, government policy making and court decisions. If the norms in written rules are clear and do not cause multiple interpretations, then decision makers can easily match a legal problem with the elements contained in the rule. Even so, legal certainty in the sense of fulfilling the elements contained in written norms, sometimes faced with other legal objectives, namely justice and legal benefits. Legal certainty can be synergized with formal justice, but it can be contrary to substantial justice. Ideally, a legal product, both regulations and decisions must meet the basic elements of law, namely legal certainty, justice (formal and substantial) and can be beneficial to people's lives.

The element of legal certainty is closely related to order and order in society. Because with the existence of legal certainty for the community, it can cause comfort and certainty in living in a society, nation and state. A guarantee of legal certainty will arise if the state has adequate and effective means to implement existing laws and regulations.⁸

Legal certainty is needed by political parties so that the resolution of internal problems is quickly resolved, so that the function of political parties as the main pillar of democracy, gathering and channeling the

⁴Article 15 Paragraph (1) *Undang-Undang Republik Indonesia Nomor 2 Tahun 2008* and amended by *Undang-Undang Republik Indonesia Nomor 2 Tahun 2011 tentang Perubahan Atas Undang-Undang Nomor 2 Tahun 2008 tentang Partai Politik*, state that: "Kedaulatan Partai Politik berada di tangan anggota yang dilaksanakan menurut AD dan ART".

⁵Kelsen, Hans. (2014). *Dasar-Dasar Hukum Normatif: Prinsip-Prinsip Teoritis untuk Mewujudkan Keadilan dalam Hukum dan Politik* (NurulitaYusron, Trans.). Bandung: Nusamedia, p. 117.

⁶Nasution, Muhammad SyukriAlbani, Lubis, Zul Pahmi, Iwan, &Faury, Ahmad. (2016). *Hukum dalam Pendekatan Filsafat*. Jakarta: Kencana Prenada Media Group, pp. 315 – 316.

⁷Kelsen, Hans. (2014). *Op. Cit.*, pp. 2 – 3.

⁸Margono. (2019). *Asas Keadilan, Kemanfaatan & Kepastian Hukum dalam Putusan Hakim*. Jakarta: Sinar Grafika, p. 114.

aspirations of the needs of the public is more effective. The function of political parties, as political communicators, in this case are supervisors and balances of state power, may diverge, resulting in the neglect of its main task of encouraging and directing the government so that it can focus on the welfare of citizens.

3. Democracy Theory

Democracy is developed from the understanding in language (etymological), *demos* means people, and *cratein* which means government, so it can be interpreted that democracy is government by the people. In developing the concept and practice of being a government of the people, by the people, and for the people (from the people, by the people, for the people). Thus the core of democracy is democracy, which is the source and purpose of national and state life.

Basrowi and Suko Susilo further stated that a democratic system is characterized by: (1) broad political participation, (2) healthy political competition, (3) maintained, managed and periodic circulation of power through the electoral process, (4) effective oversight of powers, (5) majority will be recognized, and (6) agreed political manners in society.⁹

Democracy can be seen as a mechanism and ideals of group life according to the nature of humans living together with other human beings called populist, namely together with the people and society. Therefore, democracy is prioritizing or prioritizing the will of the people. Democracy can be said to be the government of the people, by the people and for the people. Demands from the people are accommodated as criticism and input, which are then considered and deliberated by representatives of the people who sit in the legislature to be processed into a policy in the law that leads to the fulfillment of people's needs.¹⁰

4. Rule of Law Theory

Logemann defines the rule of law as the state that acts and places the law as the main standard and backrest in exercising power. State power, although extensive, is not without limits, but within the framework of the rule of law, power is limited by law (norms) so that it does not apply or act arbitrarily.¹¹

W. Friedman argued that the characteristics of the rule of law were the protection of individuals or individuals from the arbitrary actions of the authorities (*detournement de pouvoir*), recognition of individual rights and freedoms (individual freedom). Recognition of the right of individual freedom is closely related to the legal principle which states that the equality of each person before the law (equality before the law).¹²

La Ode Husen describes 5 (five) concepts about the rule of law, namely: First, *Rechtstaat* is a concept of the rule of law adopted by Continental European countries, including Germany, Italy, the Netherlands, France which uses a civil law legal system. Second, the Rule of Law is the concept of the rule of law adopted by the Anglo Saxon countries namely the United States and the United Kingdom. Third, *Socialist Legality* is a concept of the rule of law adopted by the communist-socialist state, namely the Soviet Union (now it has split into several countries, Russia, Armenia, Azerbaijan, Belarus). Fourth, *Islamic Nomocracy* is the concept of the rule of law imposed by countries with Islamic ideology, between the United Arab Emirates, Iraq and Iran. Fifth, the *Pancasila Law State* is a special rule of law concept adopted by the Indonesian state based on *Pancasila*.¹³

Sri Soemantri gave an argument about the state and the law are two inseparable institutions, in fact it was said that not a single country in the world did not have a constitution. The state is called the organization of office and power, and with this position and power the state can impose its will on other parties or control other parties. In fact, the center of power in the country originates from power based on regulations, physical power, and there is also power based on wealth. Therefore, before a state is formed or some time it is formed, a constitution containing legal norms and justice must be prepared and stipulated as an instrument to limit the domination of state power.¹⁴

5. Constitutional Theory

Understanding the constitution in the broadest sense is the overall basic provisions or basic laws of a country. The constitution can also be interpreted as a set of basic rules or basic written and unwritten laws governing the administration of government in a country. Matters regulated in the constitution are the principles of organizing a country, for example the protection of human rights as respect for citizens who are essentially owners of sovereignty, form and sovereignty of the state, the distribution of power namely; judiciary (judiciary),

⁹Basrowi, & Susilo, Suko. (2006). *Demokrasi dan Hak Asasi Manusia*. Kediri: Pustaka Utama, p. 3.

¹⁰Bakry, Noor Ms. (2009). *Pendidikan Kewarganegaraan*. Yogyakarta: Pustaka Pelajar, p. 178.

¹¹Logemann, J. H. A. (1948). *Over de Theorie van een Stelling Staatsrecht*. Leiden: Uniersitaire Pers, p. 162.

¹²Winarta, Frans Hendra. (2009). *Suara Rakyat: Hukum Tertinggi*. Jakarta: Kompas Media Nusantara, p. 7.

¹³Husen, La Ode. (2019). *Negara Hukum, Demokrasi dan Pemisahan Kekuasaan*. Makassar: CV. Social Politic Genius (SIGn), pp. 5 – 30.

¹⁴Martosowignyo, Sri Soemantri. (2014). *Hukum Tata Negara Indonesia: Pemikiran dan Pandangan*. Bandung: PT. Remaja Rosdakarya, pp. 47 – 48.

executive (President), legislative power (DPR), general election (a process to fill positions of state power, mainly executive and legislative), state territory, citizens and residents, state defense and security, education, flags, language, national symbol, national anthem, and procedures for changing the constitution.

The constitution can be said as a synthesis or configuration between politics and law. The political character tends to be free in exercising power which results in arbitrary actions, while the normative character of the law is full of principles or principles that regulate and limit power. Therefore the formal function of the constitution is often mentioned as an instrument to limit power. These two aspects of national and state life (political and legal) are integrated into a document called the constitution, so that state power is exercised based on legal norms.

6. Theory of Sovereignty

In a democratic perspective it can be stated that sovereignty is essentially in the hands of the people, and so that this sovereignty can be carried out effectively and beneficial to the general welfare, a system of delegation of power to state institutions is established to exercise that power. The agreed delegation system, namely general elections, an election mechanism by people who are sovereign and authorized to determine those who are deemed capable of exercising authority to manage the government in meeting the needs and interests of the people.

Furthermore, in the concept of sovereignty also contains the principle of authority (power). What is meant by authority or power is a freedom (liberty, power (authority) or ability (ability) owned by a person or a body to carry out a legal action that can produce effects, power, coercion, domination, and control over others.¹⁵

7. Power Theory

This theory of power sharing actually originated from the first opinion expressed by John Locke in his book *Two Treatises of Government* published in 1690, which divided power into three types of power, namely: 1) legislative power, 2) executive power, and 3) federative power (Establishing diplomatic relations with other countries. Furthermore, in 1748 Montesquieu emerged who offered a different alternative to John Locke, namely legislative, executive and judicial powers.¹⁶

Of these three branches of power, the existence of political parties as the main elements and instruments of democracy in the sense of the function of managing or carrying out people's sovereignty must certainly be able to enter into such power. In the electoral system as a means of realizing people's sovereignty, political parties are given the right to determine personnel who can occupy positions in state institutions that hold power in the state, especially the legislative and executive powers.

Political parties are closely related to power, and it is because of this power that attracts the interest of citizens to join political party organizations. It can even be said that all state power can be controlled by political parties. Although the judicial power (in the field of justice) in the principle of law and justice enforcement must be neutral and independent and free from interference and intervention from political forces, sometimes this is difficult to avoid.

8. Theory of Authority

Democracy as in general meaning is the sovereignty of the people, has become a system adopted by many countries. In its balance in the democratic system that to run a government in a country, people who occupy positions in state institutions and/or government must be based on the will of the people. After people are elected to hold positions in state and/or government institutions (referred to as officials), then according to the laws and regulations the official is given the right to take action in the administration of government.

The right to carry out these actions which so far has been interpreted as the authority of officials, but in this case the actions of officials must also be accounted for because the impact on the life of the nation and state is very significant. Mistaken actions taken by government officials, can have fatal consequences for the realization of the ideals of the nation and state that is a just and equitable welfare life for all citizens.

AtengSyafudin explained the difference between authority (authority, *gezag*) and authority (competence, *bevoegheid*), namely: authority is formal power, power that comes from the power given by the law, whereas authority only concerns a certain part of the authority. Within the authority there are a number of authorities (*rechtbevoegdheden*). Authority is an environment of public legal action, the scope of governmental authority, not only includes the authority to make government decisions (*bestuur*), but includes the authority in the context of carrying out the tasks stipulated by statutory regulations.¹⁷

¹⁵Fuady, Munir. (2014). *Teori-Teori Besar (Grand Theory) dalam Hukum*. Jakarta: Kencana Prenada Media Group, p. 92.

¹⁶Maksudi, BeddyIriawan. (2015). *Op. Cit.*, pp. 110 – 111.

¹⁷Syafudin, Ateng. (2000). Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab. *Jurnal Pro Justisia, Universitas Parahyangan*, 4(1), p. 22.

9. Judicial Theory

The judiciary is presented in the life of the nation and state as an embodiment of the rule of law. The law that becomes the guideline in having a state, of course, must fulfill the sense of justice of the community or nation which has agreed to live together in a country. Justice as the essence of law, or in other views as the purpose of law, must always be upheld. Efforts to uphold justice are a major part of the life of the nation and state, so that the implementation of the state and government is essentially aimed at the realization of justice for all citizens.

10. Dispute Resolution Theory

Settlement of disputes or disputes can be carried out in two processes, namely through litigation (court) and non-litigation (outside court). The litigation process results in agreements or decisions that have not been able to embrace the common interest, tend to cause new problems, are slow to solve, require high costs, are unresponsive, and create hostility between the parties in dispute. On the contrary, the non-litigation process resulted in a “win-win Solution” agreement, guaranteed the secrecy of the parties’ disputes, avoided delays caused by procedural and administrative procedures.¹⁸

11. Political Party Theory

Syamsudin Haris in his article entitled Factionalization and Internal Conflict of the Party, stated that although this political party is an organization where a number of people have the same ideals, but the emergence of internal political party conflicts can occur. This is because the consequences of factions within the party, conflict due to the existence of these factions is a natural thing as an internal dynamics and is a reflection of the diversity of views between groups of politicians who join a party because it is bound by a common goal and ideology.¹⁹ To avoid the influence of the factions in political parties that can widen internal conflicts, several political parties in Indonesia use and strengthen the personalization pattern, namely the existence of a single figure determining the policies of political parties.

B. Existence of Political Parties in Democratic Countries

James Bryce formulated a theory that “the party is inevitable, there is no independent state without a party”. Next Schattschneider echoed Bryce’s statement that “modern democracy cannot be imagined without a party”. The statement which necessitates the existence of political parties in the democratic system of the country was further made by the next generation of scientists. For example Giovanni Sartori who said that “political parties are the main intermediary structure between society and government”, then Clinton Rossiter stated in the American context, that “there is no America without democracy, there is no democracy without politics and there is no politics without parties”.²⁰

Some statements of the experts above, show that the existence of political parties is the main pillar and engine for determining the course of the democratic process (democratization). If democracy does not work, then this is a sign that the system of state life will be led by an authoritarian regime. In an authoritarian system, it is sure to give birth to violations of human rights, state power which tends to be very absolute, which in turn will create a corrupt administration of government.

C. The Party Court as an Instrument for Enforcing the Integrity of Political Parties

The Indonesian Institute of Sciences (LIPI) in collaboration with the Indonesian Corruption Eradication Commission (KPK) in 2017 has compiled a document on the Integrity of the Political Party System. But in this document it does not place the Political Party Court as an internal party institution that functions to uphold the party’s integrity system political. LIPI and KPK agree that there are four variables covered by the integrity of political parties, namely: (1) party ethical standards and politicians, (2) regeneration systems with integrity, (3) recruitment with integrity, and (4) transparent financial governance and accountable.²¹

In reading the explanations of the political party law that describes political party disputes, namely: (1) disputes relating to management; (2) violations of the rights of members of political parties; (3) dismissal for no apparent reason; (4) abuse of authority; (5) financial accountability, and/or (6) objections to decisions by

¹⁸Nugroho, Susanti Adi. (2009). *Mediasi sebagai Alternatif Penyelesaian Sengketa*. Jakarta: Telaga Ilmu, p. 1.

¹⁹Haris, Syamsuddin. (2018). Faksionalisasi dan Konflik Internal Partai. In Aisah Putri Budiarti (Ed.), *Faksi dan Konflik Internal Partai Politik di Indonesia Era Reformasi*. Jakarta: Yayasan Obor Indonesia, p. 313.

²⁰Katz, Richard S., & Crotty, William. (2015). *Handbook Partai Politik* (Ahmad Asnawi, Trans.). Bandung: Nusamedia, p. 7.

²¹Penyusun, Tim. (2017). Sistem Integritas Partai Politik. In Syamsuddin Haris, Moch. Nurhasim, Sri Nuryanti, Sri Yanuarti, Ridho Imawan Hanafi, & Devi Darmawan (Eds.), *Kertas Posisi (Position Paper) Sistem Integritas Partai Politik*. Jakarta: Direktorat Pendidikan dan Pelayanan Masyarakat Kedepuitan Pencegahan, Komisi Pemberantasan Korupsi bekerjasama dengan Pusat Penelitian Politik, Lembaga Ilmu Pengetahuan Indonesia, p. 8.

political parties. All of these are closely related to the integrity of political parties, because there are elements of violations or unlawful acts committed by political party administrators and thus require law enforcement and justice.

IV. DISCUSSION

A. Position of the Party Court as a Judiciary in Its Function to Resolve Party Internal Disputes

1. Use of the Word “Court”

In fact, not all political parties use the word court as the name of the institution that resolves internal disputes. This can be seen in the AD and ART provisions of each political party, as described in the table below:

Table 1. Mention of the Name of the Political Party Internal Dispute Settlement Institution in Accordance with the Respective Statutes & By-Laws²²

No	Party Name	Internal Dispute Settlement Institution
1	Indonesian Democratic Party of Struggle (PDIP)	Party Court
2	Work Group (Golkar Party)	Party Court
3	Great Indonesia Movement Party (Gerindra Party)	Honorary Council
4	Democratic Party (Democrat)	Honorary Board
5	National Awakening Party (PKB)	Tahkim Assembly
6	National Mandate Party (PAN)	Party Court
7	Prosperous Justice Party (PKS)	Tahkim Assembly
8	Democratic National Party (Nasdem)	Party Court
9	United Development Party (PPP)	Party Court

The use of the word ‘court’ by political parties in mentioning their party’s internal dispute resolution institutions, is very reasonable because it follows the provisions of Article 32 paragraph (2) of Law Number 2 of 2011 which states that to resolve internal disputes, political parties form an institution that can be named “Political Party court or other designations”. Though the use of the word “court” has the consequence of understanding for the community that the institution can be interpreted as a judicial institution.

With the use of the word ‘Mahkamah’ or ‘Tahkim Assembly’ by the majority of political parties that won seats in parliament in the 2014 elections, this shows that the political parties want that the word ‘court’ will emphasize that this institution is really seated as a “judicial institution”. And as a judicial institution, the Party Court must be able to provide a fair and useful decision and have legal certainty in the resolution of internal political party disputes.

2. Position of the Party Court According to the Political Party Law

Provisions concerning the mechanism for resolving internal political party disputes have begun to be formulated and set forth in the Law on Political Parties after the reformation, mainly in Law Number 31 of 2002, Law Number 2 of 2008, and Law Number 2 of 2011. More details can be described in the table below:

Table 2. Rule of Law in Political Party Law concerning Settlement of Internal Political Party Dispute

Law Number 31 of 2002	Law Number 2 of 2008	Law Number 2 of 2011
Article 14 paragraph (1), 15 and 16	Articles 32 and 33	Articles 32 and 33
<ul style="list-style-type: none"> Conflict in terms of party management structure The issue of dual management structures. 	<ul style="list-style-type: none"> Internal party disputes are not only related to management 	<ul style="list-style-type: none"> Disputes are not only related to management. There are two ways
Law Number 31 of 2002	Law Number 2 of 2008	Law Number 2 of 2011
<ul style="list-style-type: none"> Conflict resolution is prioritized by deliberation, if it fails then it is pursued through a court (District Court, and 	<ul style="list-style-type: none"> There are three ways to resolve internal party disputes; (1) Deliberation, (2) legal proceedings through the District Court, with the Supreme Court 	<ul style="list-style-type: none"> Settlement of internal party disputes, namely: (1) Internal settlement through the Political Party Court that is regulated in the party AD & ART,

²²KPU. (2018). Parpol yang Dokumennya Lengkap. Retrieved from <https://infopemilu.kpu.go.id/pileg2019/verpol/lengkap>

Supreme Court Cassation • Settlement of internal dispute cases through the District Court a maximum of 60 days, and the Supreme Court 30 days.	Cassation, and (3) Party Reconciliation, Mediation, and Arbitration stipulated in party AD & ART. • Settlement of internal party disputes through the District Court is a maximum of 60 days, and the Supreme Court Cassation is a maximum of 30 days.	(2) If the Party Court fails to resolve this internal dispute, then it is taken through the District Court and the Supreme Court Cassation. • Settlement of internal party disputes through the District Court is a maximum of 60 days, and the Supreme Court Cassation is a maximum of 30 days.
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The provisions of the three Political Party Laws above, it can be understood that there is a desire to resolve internal political party disputes independently by political parties by prioritizing the deliberations. The use of deliberations is certainly based on values that have become the culture or habits of Indonesian people. The principle of deliberation has become a cultural root in the life of the nation and state for the people of Indonesia as well as this has been formulated in the Basic State of the Republic of Indonesia namely Pancasila, in the fourth precept of “populace led by wisdom of wisdom in deliberative representation”.

The Party Court, which is tasked with assessing the decisions of political parties, will find it difficult to position itself as a neutral and independent institution. Because in terms of the rule of law (Political Party Law) the position of the Party Court is not declared as an institution that is neutral and independent in the institutional structure of political parties. The executive party of the political party can annul the ruling of the Party Court, or at least the ruling will not be carried out if it is contrary to the decision of the Chairperson as the highest leader of the political party.

3. Position of the Party Court According to the Articles of Association and Bylaws of Political Parties in Indonesia

In the perspective of constitutional theory that the Articles of Association and by-laws are constitutions for an organization, which regulates basic matters in the organization, such as the rights and obligations of members of the organization and the division of roles of the organizational structure, as well as organizational goals. Political parties as political organizations certainly have an AD and ART, so in this study it is necessary to look at what kind of political party seeks the Party Court in its organizational structure.

The Political Party Law highly respects the statutes and by-laws of political parties as an internal legal system that is used to manage political parties in strengthening their role as the main pillars of democracy. As a form of appreciation for the Political Party Law so that the regulation of the internal political party dispute resolution mechanism is submitted to be regulated separately in the Articles of Association and Bylaws of political parties.

Article 2 paragraph (4) letter m of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 states that in the Articles of Association of political parties, one of the mechanisms governing the settlement of internal political party disputes. In this way, to explore in full how the existence of the Party Court can be seen in each party’s AD and ART which have been officially registered with the government through the Indonesian Ministry of Law and Human Rights.

4. The Party’s Court in the Perspective of Judicial Power in Indonesia

The fundamental difference between the Party Court and the Supreme Court and the Constitutional Court is the basic legal aspects of the formation of the institution. The Party Court is an internal political party institution formed based on the provisions of one of the articles, namely Article 32 paragraph (2) of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties. Thus, the Party Court is only part of the provisions of the Political Party Law, the regulation of which is very minimal, even the use of a court decision is not absolute, in the sense of being allowed to use another name.

Another thing that distinguishes the Party Court from the Supreme Court and the Constitutional Court, from the aspect of appointing judges who have the duty and authority in examining and deciding cases. Judge of the Supreme Court and the Constitutional Court through selection both administratively and potentially conducted based on statutory provisions. The Supreme Court and Constitutional Court Justices were specifically selected, and in carrying out their duties and authorities were overseen by the Judicial Commission. This Judicial Commission Institution, is an institution deliberately presented as a result of the 1945 Amendment (1999-2002), to maintain the morale and dignity of the judiciary. It is not even just supervising, the Judgment Commission has proposed the appointment of justices.

The existence of the Party Court, which is one of the internal institutions of political parties, enables political parties to put this institution apart from the structure of the executive (executive) leadership of political

parties. This possibility could occur, because the Political Party Law does not clarify the existence of the Party Court in its position internally by political parties, whether as a judicial institution or as a part of political party executives. The Political Party Law gives it to each political party to regulate the position of the Party Court and the internal political party dispute resolution mechanism in the Statutes and/or Bylaws.

To be able to produce legal certainty and justice, the Party Court should resolve internal political party disputes in accordance with the principles of justice contained in the Judicial Power Act (Law Number 48 of 2009).

5. Comparison of Party Court with Arbitration and Mediation in Indonesia

The fundamental difference between the Party Court and Arbitration and Mediation is the basis of its formation and the arrangement of the procedures for resolving disputes. The Party Court is only regulated minimally in Article 32 paragraph (2) of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, this shows that the Party Court did not receive serious attention from the legislators. Because the lack of regulation of the Party Court in the law has an impact on the weak position of the Party Court in carrying out its functions.

Compared to the Arbitration and Mediation institutions that are specially regulated and formed based on a separate law namely Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution. Then to strengthen the mediation process in court, the Supreme Court issued a Supreme Court Regulation (PERMA) No. 1 of 2016 about the Mediation Process in the Court. With this regulation, the position of Arbitration and Mediation obtains legal force in carrying out its function of resolving disputes, so that its decision also obtains legal force.

In addition to the legal basis for the establishment of different institutions between the Party Court and Arbitration and Mediation, another thing that can distinguish is the professional staff assigned to the institution. For Arbitration and Mediation, both Arbitrators and Mediators of these two professions must obtain official recognition from the judiciary or other institutions that obtain accreditation from the judiciary. The recognition was preceded by having attended training and had graduated as an Arbitrator and/or Mediator, because the profession of Arbitrator and Mediation must be accounted for in terms of expertise in resolving disputes or disputes.

B. Guaranteed Legal Certainty of Party Party's Decision

1. Party Court Procedure Law

The leadership of a political party seems to understand that the mechanism (procedural law) of internal political party dispute resolution can be further regulated in a party regulation under the Articles of Association and by-laws, even though the Political Party Law stipulates that the mechanism must be contained in the Articles of Association and Bylaws. The regulation of the internal settlement mechanism of political parties in the Articles of Association and by-laws are, of course, based on the argument that to protect the rights of members of political parties and the working relations of political party structures must be regulated in the constitution of political parties, in this case the Statutes and by-laws.

So, in compiling the Party Court Procedure Law, it should synergize between the Civil Procedure Code and the State Administration, so that a consideration of the Party Court assembly that is of a confidential nature and meets the principles of law and justice. It is generally understood that in the political system, power plays its role freely, as if it does not want the legal system to work in the dynamics of the party.

A problem that is solved by means of power alone, is certain to deviate from legal norms. Indeed, in public administration law the term discretion is known as a decision of the leadership of a legal entity that can be made as long as it is based on consideration in the public interest. But sometimes public officials (leaders, elites or political parties) take refuge behind the public interest to act arbitrarily.

2. Legal Certainty Party Party's Decision

Legal certainty also cannot be ignored in a decision of an institution authorized to examine and decide on a case. The Party Court is no exception, even though it is said that it is not a pure judicial institution, but must be able to provide legal certainty over its decision in resolving internal political party disputes.

In Article 32 paragraph (2) of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, a provision has been formulated that in order to settle internal disputes, political parties must form an institution called the Party Court or as the name other.

The existence of the Party Court in guaranteeing legal certainty cannot be realized, due to the position of the Party Court in the internal political parties is still problematic in terms of impartiality of the judiciary.²³ In

²³Firdaus, & Kurniawan, Nalom. (2017). Kekuatan Putusan Mahkamah Partai Ditinjau dari Sistem Kekuasaan Kehakiman Menurut UUD 1945. *Jurnal Konstitusi, Mahkamah Konstitusi RI*, 14(3), 644 – 671. doi: <https://doi.org/10.31078/jk1439>

these circumstances, it has been confirmed that the legal force of the Party Court's decision did not receive appreciation internally or externally. Parties who disputed within the party would certainly not be satisfied with the decision of the Party Court, because they were vulnerable they already knew in advance the position of the Party Court held by the party's internal and external power interests.

The government which is in the external position of a political party, will not respect and implement the Party Court's decision, because it could be that the decision is not symmetrical with the government's wishes. Besides the Political Party Law does not require external political parties to respect the decision of the Party Court. Because the ruling of the Party Court, although it is final and binding, the binding power applies only internally.

3. Decision of the Party Court

The researcher considers that the Party Court's decision will not always be authoritative, because it does not get the recognition of the parties, both internally and externally. This situation will continue if the existence of the Party Court is not strengthened in the Law on Political Parties and/or Statutes and Bylaws of political parties.

The authority of the Party Court will only be authoritative if it settles disputes not related to the management at the central level. In fact, sometimes the authority of the Party Court is only used as an instrument by the leadership of a Political Party in legitimizing its decisions relating to violations of the rights of members of political parties.

C. The Ideal Concept of Party Court Position in Ensuring Institutional Neutrality and Independence

Neutrality and independence of an institution whose function is to resolve disputes or disputes becomes absolute, as judicial institutions are demanded to be neutral and independent. The neutral principle is to place an institution or individual who works for the institution to be in a position that is not in favor of one of the parties that is in a dispute. While independence is the independence or freedom of the institution and/or individuals in the institution in examining and deciding cases. Must not be interfered with or intervened by elements or parties outside the institution.

In interpreting the independence of the judiciary as stated in Article 3 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Authority states that: "In carrying out its duties and functions, judges and constitutional justices are obliged to maintain judicial independence". Then in the Elucidation of Article 3 paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power, it states that what is meant by "independence of the judiciary" is to be free from outside interference and free from all forms of physical and psychological pressure.

Law enforcement and justice will not be guaranteed, if the institution given the task and authority to adjudicate cases is still easily intervened by parties outside the institution. So that the decision of the institution besides being unable to fulfill a sense of justice, also cannot guarantee legal certainty for the parties. It is indeed difficult to avoid outside intervention, because after all, the case being examined concerns interests that may not be limited to those of litigants. This interest can be related to other parties who support one of the parties, but cannot enter in principle in a court hearing.

An independent attitude encourages strong judges' behavior, adheres to the principles and belief in the truth according to moral demands and applicable legal provisions. In its application the judge must carry out the judicial function independently and be free from influence, pressure, threats or inducements either directly or indirectly from any party.²⁴

The Party Court, indeed is not a state judicial institution, but in its origin the Party Court was created as an institution that adjudicated an internal political party dispute. In its function of resolving these disputes, of course the Court is demanded to be able to produce justice for the disputing parties. The position and function of the Party Court, such as, makes this organ as a judicial institution in internal political parties. As a judicial institution, it has become a demand to carry out its functions and authorities based on the principle of neutrality and independence. It is incorrect to say that because the Party Court is an internal institution of a political party, this institution should not be required as a law enforcement and justice institution.

²⁴Aburaera, Sukarno. (2012). *Kekuasaan Kehakiman Indonesia*. Makassar: Arus Timur, p. 16.

V. CONCLUSION

1. The Party Court is a judicial institution because of its function and authority to carry out the judicial process in terms of resolving internal political party disputes which in essence must produce justice.
2. Decisions of the Party Court cannot guarantee legal certainty, due to the absence of complete and standardized regulations in the Political Party Law as well as in the Articles of Association and Bylaws of political parties about the mechanisms for resolving internal disputes of political parties.
3. The ideal concept of position and membership of the Party Court, among others, is:
 - a. The Party Court must be a separate institution from the executive structure of political parties;
 - b. In addition to the function of the Party Court to resolve internal political party disputes, it also functions as an institution that upholds the code of ethics and the integrity system of political parties;
 - c. Membership of the Party Court should not be held by executive leaders of political parties, so as not to violate the principle of *nemo iudex in propria causa*, one cannot be a judge in his own case.
 - d. The configuration of the membership of the Party Court must be appointed from internal figures of political parties who have the integrity of personality who are still highly respected by political party cadres. Plus external figures of political parties known to have good personal integrity from professionals in the field of law, such as lawyers, academics, and mediators registered in court.

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