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Political Party Deliberation: Mechanism for Safeguarding Constituent Rights against Vacancies in House of Representati...

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Political Party Deliberation: Mechanism for Safeguarding Constituent Rights against Vacancies in House of Representatives Affected by Political Party Dissolution

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Abstract

The Indonesian Constitutional Court has the power to dissolve political parties. But this power has never really been used. This research aims to examine the impact of the legal vacuum created by the collapse of political parties. The problems raised in this research are as follows: First, aspects of the legitimacy of political party management deliberations in filling the vacancies of members of representative bodies as an implication of the dissolution of political parties; Second, the deliberation mechanism of political party officials should be analyzed as a legal reform to fill the vacant positions of members of representative bodies from disbanded political parties. The findings of this study take the shape of a notion concerning party management decisions offering their constituent votes to other political parties that do not reach the threshold for collecting votes to sit in parliament because they do not satisfy the parliamentary threshold.

1. Introduction

15 Political parties play a vital role in the formation of a democratic society; hence, their presence must be kept at a distance from forces that might harm democracy. ¹ Political party as an organized group of people who share a common vision and mission in order to gain power.² Nonetheless, in the event that a political party is established with beliefs, values, and goals at odds with the ideology of the state, or engages in actions that are at odds with the principles and tenets of the state, Pancasila, and the 1945 Constitution, then the constitutional procedure is in place for petitioning the Constitutional Court to dissolve the political party.³

60 One of the ramifications of the Constitutional Court dissolving political parties is that they are no longer allowed to engage in political activity with their emblems, as well as the firing of representative members (House of Representatives/Regional House of Representatives, hereinafter referred to as DPR/DPRD) advocated by the political party in question.⁴ This is the result of the DPR/DPRD's tight ties to the political party that backs it from a legal standpoint. According to Ni'matul Huda, partisan type influences how the DPR/DPRD interacts with the political parties that back them. Recalling that the policies outlined by the political parties endorsing them serve as the foundation for the representational organisations' tasks. Indonesia implements two systems simultaneously the proportional and district systems to elect legislative candidates at both the national and regional levels.⁵

In the framework of a representative democratic system, there is, in fact, a very significant link between representative (legislative) members and constituents. A

41 ¹ Nano Tresna Arfana, "Jalan Konstitusional Pembubaran Partai Politik," *Mahkamah Konstitusi Republik Indonesia*, September 24, 2022, <https://www.mkri.id/index.php?page=web.Berita&id=18541&menu=2>.

15 ² Roni Sulistyanto Luhukay, "Revitalizing The Regeneration System Of Political Parties In Building Pancasila Democracy," *Jurnal Legalitas* 17, no. 1 (2024): 81-97, <https://doi.org/DOI:https://doi.org/10.33756/jelta.v17i1.24897>.

2 ³ Ana Fauzia, *Ana Fauzia, "Pembaharuan Hukum Di Indonesia Melalui Rekonstruksi Pengaturan Pembubaran Partai Politik"* (Malang: Universitas Muhammadiyah Malang, 2022).

39 ⁴ Fitria Esfandiari and Sholahuddin Al Fatih, "Initiating a Permanent Electoral Body to Resolve Dignified Election Disputes: Assessing the Effectiveness of Gakkumdu," *Yustisia Jurnal Hukum* 9, no. 3 (December 31, 2020): 333, <https://doi.org/10.20961/yustisia.v9i3.44437>.

⁵ Rahmat Muhajir Nugroho et al., "A Comparison of Legislative Election Systems in Indonesia and Malaysia," *Jurnal Media Hukum* 31, no. 1 (2024): 78-94.

legislature chosen by the general public under a representative democracy system is closely linked to the administration of the state. A key idea in representative democracy is the logic of representation. It is termed so because it might happen in a representative democracy when a voter selects a representative to act on their behalf under a form of government that upholds democracy. Thus, the interaction between elected officials and their citizens constitutes the core of representative democracy in parliament. Constituents are the ones who have the mandate in this connection, and elected lawmakers are the ones who carry it out.⁶ As a representation of the concept of popular sovereignty, a democratic government must ensure that the people are actively involved in planning, organising, executing, overseeing, and evaluating the execution of authority functions.⁷ In modern democratic systems, there are three varieties of representational democracy: democracy with a parliamentary system, democracy with the division of powers, and democracy where the people influence the government directly through referendums and initiatives.

The gap between the sovereign people and the government established to carry out that sovereignty is one of the effects of putting representative democracy into practice. The notion of people's sovereignty can be severely limited and ensnared in the totalitarian interpretation of people's sovereignty if there is no ensured means for the people to participate in the state as a means of doing so.⁸ Therefore, in parliament and as public officials, there must be procedures that link the people with their representatives. A democratic administration requires tools and procedures to enable the expression of latent desires. If not, those in power may exploit the representative system to influence and force others.⁹ There are at least two interrelated instruments: political parties' presence and general elections' conduct.

Political parties are required to serve as a bridge between the government and the people to achieve democracy. Political parties are required for a democratic society to

⁶ Fathul Hamdani and Ana Fauzia, "Legal Discourse: The Spirit of Democracy and Human Rights Post Simultaneous Regional Elections 2020 in the Covid-19 Pandemic Era," *Lex Scientia Law Review* 5, no. 1 (May 30, 2021), <https://doi.org/10.15294/lesrev.v5i1.45887>.

⁷ Jimly Asshiddiqie, "Partai Politik Dan Pemilihan Umum Sebagai Instrumen Demokrasi," *Jurnal Konstitusi* 3, no. 4 (2006): 6–27.

⁸ Roelof Kranenburg and B. Sabaroesdin, *Ilmu Negara* (Jakarta: Pradnya Paramita, 1989).

⁹ Ibid.

function. Only an organiser based on state goals can facilitate orderly decision-making. Political parties' duty is to arrange people's desires into more systematic public opinion, thus it may serve as the basis for orderly decision-making.¹⁰ In a contemporary state, the number of voters and their diverse interests must be managed to make choices. Thus, political parties significantly influence on the selection process for both people and policy content.¹¹

Therefore, within the democratic system, political parties play a vital role. Parties act as a very strategic conduit between the people and government processes. Some even claim that the true measure of democracy is political parties.¹² Therefore political parties are pillars of a democratic political system.¹³ In a representative democracy system, it is commonly assumed that sovereign people participate primarily through popular vote to construct representative institutions. This representational technique is seen to be successful in ensuring that people's objectives or interests are represented. Thus, under a representative system, the status and function of political parties are deemed dominating.¹⁴ Citizens should be at the forefront and the government's emphasis should be placed on building public institutions that have integrity and responsiveness.¹⁵

This indicates that political parties have a significant influence, particularly when selecting their cadres for general elections.¹⁶ Political parties are, therefore, required to take accountability for all of their deeds when one or more of their cadres including

¹⁰ RM MacIver, *The Modern State* (London: Oxford University Press, 1955).

¹¹ Asshiddiqie, "Partai Politik Dan Pemilihan Umum Sebagai Instrumen Demokrasi."

¹² Yves Mény and Andrew Knapp, *Government and Politics in Western Europe: Britain, France, Italy, Germany*, 3rd ed, Comparative European Politics (Oxford [England] ; New York: Oxford University Press, 1998).

¹³ Dawn Oliver, *Constitutional Reform in the United Kingdom* (Oxford ; New York: Oxford University Press, 2003).

¹⁴ Fitria Esfandiari and Arsyi Manggali Arya Putra, "Implementation of Consistent Pilkada in Malang District from Precautionary Principles," *Audito Comparative Law Journal (ACLJ)* 2, no. 1 (February 17, 2021): 11–18, <https://doi.org/10.22219/aclj.v2i1.15157>.

¹⁵ Universitas Indonesia, Indonesia and Rudita Laode, "Citizen Compensation for Poor Public Service Delivery: A Civil Rights Perspective," *Brawijaya Law Journal* 10, no. 1 (April 30, 2023): 19–33, <https://doi.org/10.21776/ub.blj.2023.010.01.02>.

¹⁶ Fitria Esfandiari and Nur Hidayah, "General Elections in Indonesia : Between Human Rights and Constitutional Rights," in *Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia, Semarang, Indonesia: EAI, 2021), <https://doi.org/10.4108/eai.1-7-2020.2303622>.

a member of the representative bench have issues after being elected. This is only an expression of the connection between political parties and entities that serve as representatives; in this instance, the political party assumes the role of a subject that offers direct delegation by taking into account certain attributes to ensure that it can secure community representation.

In actuality, the Constitutional Court has established regulations governing the processes involved in dissolving political parties concerning the consequences of doing so. But until now, there has not been a system in place for filling positions if a political party's cadre is legally dissolved by the Constitutional Court, which implies that the party that supports them would also be legally dissolved. This indicates that, in this instance, it may be said that there is still legal ambiguity surrounding the appointment of new members of representative bodies.¹⁷ Meanwhile, Legal Certainty, according to Moh. Mahfud MD, as mentioned in Jufri Dewa, must be consistent with Article 28 D paragraph (1) of the Republic of Indonesia's 1945 Constitution, which emphasises the necessity for "fair legal certainty" rather than simply certainty.¹⁸

As per Jimly Asshidiqie as the Constitutional Court Expert in Oheo K. Haris, legal professionals usually comprehend that law aims to achieve three primary goals: (i) justice or fairness; (ii) certainty or *zekerheid*; and (iii) utility. Justice is weighed in relation to *mizan* (balance), equity (obedience), and proportionality (fairness). Meanwhile, peace and order are linked to legal clarity. Concurrently, the anticipated utility ensures that every one of these principles will result in a harmonious coexistence.¹⁹

However, there are differing viewpoints on the Principles of Legal Fiction. That when a statutory regulation is established, everyone is presumed to know (presumption

¹⁷ Muhammad Jufri Dewa et al., "Analisis Hukum Pertanggung Jawaban Izin Pengelolaan Limbah PT. Antam Terhadap Dampak Kerusakan Lingkungan Pantai Pomalaa," *Halu Oleo Legal Research* 4, no. 2 (2022), <https://doi.org/10.33772/holresch.v4i2.49>.

¹⁸ Oheo K Haris, "Good Governance (Tata Kelola Pemerintahan Yang Baik) Dalam Pemberian Izin Oleh Pemerintah Daerah Di Bidang Pertambangan," *Yuridika* 30, no. 1 (August 21, 2017): 58, <https://doi.org/10.20473/ydk.v30i1.4879>.

¹⁹ Riki Perdana Raya Waruwu, "Penerapan Asas Fiksi Hukum Dalam Perma," JDIH Mahkamah Agung RI, accessed July 27, 2024, <https://jdih.mahkamahagung.go.id/berita-detail/penerapan-asas-fiksi-hukum-dalam-perma>.

14 iures de iure), and these rules are enforceable, thus a person's ignorance of the law does not absolve/excuse them from legal obligations. The presence of the idea of legal fiction has been normalised in the explanation of Article 81 of the provisions of Law Number 12 of 2011, covering Legislative Regulations, which states that "by promulgating Legislative Regulations in the official gazette, everyone is deemed to have known about them". Article 81 refers to seven sorts of official gazettes, which are:²⁰

- 13
- a. State Gazette of The Republic of Indonesia;
 - b. Supplement To State Gazette of The Republic of Indonesia;
 - c. Bulletin Gazette of The Republic of Indonesia;
 - d. Supplement To Bulletin Gazette of The Republic of Indonesia;
 - e. Regional Gazette;
 - f. Supplement to Regional Gazette; or
 - g. Regional Official Gazette.

Marida Farida Indrati Soeprapto as the Constitutional Court Expert, concurred with Riki Perdana Raya Waruwu, stating that legislation may only have become legally enforceable on the public if it is published in a state gazette. The aforementioned legal fiction idea contrasts with the legality principle, which states that laws must be written (*lex scripta*), explicit and unambiguous (*lex certa*), not be construed similarly (*lex stripta*), and not be applied retrospectively (*lex praevia*).²¹

5 The existence of legal uncertainty must be understood because Law Number 2 of 2011 concerning Political Parties (Political Parties Law) is a political product, and to end it, there needs to be a right to review.²² The right to test (*toetsingsrecht*) and (*judicial review*) is to end disagreements. These two terms contain the same meaning, namely the authority to test or review. In this scenario, recognizing that the law is a statutory

²⁰ Maria Farida Indrati, *Ilmu Perundang-Undangan: Proses Dan Teknik Pembentukannya; Jilid 2* (Yogyakarta: Kanisius, 2007).

²¹ Guasman Tatawu, "Hakekat Hukum Putusan Mahkamah Konstitusi Terhadap Sengketa Pemilihan Kepala Daerah (Pilkada)," *Halu Oleo Law Review* 1, no. 2 (2017).

²² Sulardi and Fitria Esfandiari, "The Authority of the People's Consultative Assembly and the Discourse of the Limited Amendment of the Constitution," in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)* (International Conference on Law, Economics and Health (ICLEH 2020), Semarang, Indonesia: Atlantis Press, 2020), <https://doi.org/10.2991/aebmr.k.200513.050>.

legal product that may be examined by any society, then it legitimises that there are deficiencies in the articles it governs, one such flaw relates to the procedure for filling vacancies, specifically with regard to the positions of members of representative bodies.

The Constitutional Court's dissolution of a political party would almost probably result in legal implications connected to the legal connections that the political party had before its dissolution.²³ One of the most fundamental legal connections that a political party has entered is to participate in elections to give its representatives seats in the House of Representatives. In reference to this, Jimly Asshiddiqie stated that if the election participants, in this example, political parties, are subsequently disbanded, the membership status of House of Representatives members elected from the political party in question would be affected legally.²⁴ The existence of regulations governing the dissolution of political parties can surely lead to firing of party board members. Keeping in mind that the dismissal of House of Representatives is subject to the legal requirements and procedures set forth in Article 22B of the 1945 Constitution of the Republic of Indonesia. Until now, the Constitutional Court has not made any obligatory requirements regarding the legal effects of a political party's dissolution on the status of House of Representatives members from the dissolved political party. Thus, if a political party is dissolved in the future, it will undoubtedly cause confusion and legal uncertainty about the position of House of Representatives members from the party that was dissolved by the Constitutional Court.

2. Problem Statement

In light of the background information provided above, the issues will look into include:

- a. How is the legitimacy of deliberations by political party board in filling vacancies in the positions of members of representative bodies as an implication of the dissolution of political parties?

²³ Jimly Asshiddiqie, *Kemerdekaan Berserikat, Pembubaran Partai Politik, Dan Mahkamah Konstitusi*, Cet. 1 (Jakarta: Konstitusi Pers, 2005).

²⁴ Afan Gaffar, *Politik Indonesia : Transisi Menuju Demokrasi* (Yogyakarta: Pustaka Pelajar, 1999).

- b. How is the deliberation mechanism for political party board to update the law on filling vacancies for members of representative bodies from disbanded political parties?

3. Methods

This article was conducted using normative legal research methods with a statutory and conceptual approach. The aim of this normative legal research is to discover legal rules, legal doctrine, and legal principles that underlie the problems in this research. To support this research, the legislative approach is intended to outline the regulations relating to the dissolution of political parties and their implications. Meanwhile, the conceptual approach aims to analyze the concepts of citizens' constitutional rights that need to be safeguarded, especially regarding the implications of the dissolution of political parties.

4. Discussion

4.1 Political Party Dissolution's Consequences: Voting Rights of Citizens and Their Constitutionality in Connection to Political Party Deliberation

The position as a democratic rule of law is imaged and answers all national problems with the political interests of political parties and politicians in representative institutions.²⁵ A fundamental concept of democratic representation is that voters can elect officials who share their values and desires. In a functioning and high-quality democracy, politicians and their constituents should possess "congruent" opinions on issues of social and economic importance.²⁶ The mechanism for filling vacancies for members of representative bodies is not regulated in Law Number 13 of 2019 concerning the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Board, and the Regional House of Representatives (MD3 Law) want legal reforms related to filling vacancies in House of Representative member positions as an

²⁵ Moh. Fahriyanto Marikar, "Harmonizing the National Legal System Through the Formation of Ideal Legislation," *JURNAL LEGALITAS* 16, no. 2 (July 4, 2023): 167-78, <https://doi.org/10.33756/jelta.v16i2.19941>.

²⁶ Diego Fossati et al., "Ideological Representation in Clientelistic Democracies: The Indonesian Case," *Electoral Studies* 63 (February 2020): 102111, <https://doi.org/10.1016/j.electstud.2019.102111>.

2 implication of the dissolution of political parties. Despite the fact that no political party has been dissolved since the Constitutional Court's inception, a legislative framework to foresee such circumstances is critical. The dissolution of this political party was never carried out due to the consequences of the applicant from the dissolution of the political party carried out by the Government.²⁷ Also, the reasons for the dissolution of political parties are still limited to ideology, while to be adjusted to current conditions, it is no longer relevant to make the reason for conflicting ideologies as a reason for the dissolution of political parties.²⁸

57 Referring to the MD3 Law, the provisions relating to filling vacancies in the positions of members of representative bodies are actually delegated to be regulated in the House of Representatives Rules of Procedure. However, according to the House of Representatives Regulation No. 1 of 2020 concerning the Rules of Procedure in Article 17 which regulates interim replacements, it does not explain the mechanism for replacing representative bodies resulting from the dissolution of a political party.

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22 This mechanism for filling vacancies in representative member positions through political party deliberations is one of the mechanisms explained by Ni'matul Huda, in terms of the mechanism for filling vacancies resulting from the dissolution of political parties that can be implemented are by implementing a stembus accord, a plebiscite mechanism, and political party deliberation. Firstly, in the event that the parliamentary threshold in the election threshold is not attained as a result of individuals not voting, this stembus accord mechanism is put into place. Referring to history, stembus accord was first applied in the 1955 General Election, which was the first election in Indonesia. The election was held twice; the first election, was on September 29, 1955, to elect members of the DPR. The second election was held on December 15, 1955, to elect members of the Constituent Assembly. In this year, the 1950 UUDS was enacted, and the parliamentary system of government was adopted, which lasted from 1950 to

²⁷ As stated in Article 3 subsection 1 The Constitutional Court of the Republic of Indonesia, "Constitutional Court Regulation Number 12 of 2008 on Procedures for the Dissolution of Political Parties" (2008). "Pemohon adalah Pemerintah yang dapat diwakili oleh Jaksa Agung dan/atau Menteri yang ditugasi oleh Presiden untuk itu".

²⁸ As stated in Article 2 Ibid. "Partai Politik dapat dibubarkan oleh Mahkamah apabila karena ideologi, asas, tujuan, program partai politik bertentangan dengan Undang- Undang Dasar Negara Republik Indonesia Tahun 1945"

1959. The 1955 elections used a proportional system or so-called multi-member constituencies and a multiparty system. The electoral law divided Indonesia into 16 electoral districts. The allocation of seats in each district was based on population proportions, with each district entitled to a minimum of three seats in the DPR and six seats in the Constituent Assembly (articles 32 and 33 of Law No.7 of 1953). Seats were awarded to parties and other contestants according to the number of votes they received. Remaining votes could be combined (stembus accord), i.e., there was a prior agreement to merge, either within a constituency or for one party at the national level. The list of candidates uses a closed list system. In this case, the implementation of the stembus accord is carried out before the election.²⁹

This mechanism was then continued in the 1971 and 1999 elections. The 1971 election was held on July 5, 1971, referring to Law No. 15 of 1969 concerning Elections. The seat distribution method used in the 1971 elections was different from the 1955 elections. In the 1971 elections, all seats were divided equally in each electoral district. The division of seats in the 1971 elections was carried out in three stages in the event that there were parties that made a stembus accoord, but in electoral districts where there were no political parties that made a stembus accoord, the division of seats was only carried out in two stages. In the first stage, the votes of political parties were divided by the kiesquotient in the electoral district. In the second stage, if there are political parties that stembus accoord, then the sum of the remaining votes of the political parties that combine the remaining votes is divided by the kiesquotient. In the next stage, if there are still seats remaining, one seat each is given to the political party that wins the largest remaining votes, including the combined remaining votes of the parties that stembus accoord from the second stage of seat distribution. If there are no political parties that stembus accoord, then after the first division, the remaining seats are distributed directly to the political parties that have the largest remaining votes.³⁰

In the 1999 elections, the method of distributing seats for political parties followed that of previous elections, using a proportional system following the Roget variant. Each level II region (district/city) received at least one DPR seat (Article 4 Paragraph 1 of

²⁹ Fitriyah Fitriyah, *Teori Dan Praktik Pemilihan Umum Di Indonesia* (Yogyakarta: Deepublish, 2012).

³⁰ Ibid.

Law No.3 of 1999). The remaining votes were recalculated if several political parties agreed to combine the remaining votes (stembus accord) so as to reach the quota of seats. The agreement to combine the remaining votes was made officially before the voting date of June 7, 1999. The political party entitled to the combined seats depends on their agreement, usually the political party with the largest number of remaining votes. If the combined remaining votes remain below the quota price of the seats, then the seats are given to the political party that has the largest remaining votes. It could be a political party that made a stembus accord, it could also be a certain political party that did not join the stembus accord. In practice, the distribution of seats in the 1999 elections was done without taking into account the stembus accord.³¹

Looking at the above understanding, it can be said that stembusaccord is a mechanism for calculating the remaining votes from the election results that can be used if the first stage as a normal calculation of votes with BPP has been carried out and the agreement (stembusaccord) to merge the votes must be carried out a week before the voting is held.

2 Secondly, the plebiscite mechanism has an implementation model that is almost similar to the follow-up general election mechanism. Political parties convey their various viewpoints prior to the plebiscite process, with the aim of swaying each other's constituents. The constituents in question are themselves members of defunct political parties. Therefore, the author believes that these two procedures are not ideal since, in addition to the people exercising their political rights, the idea of a general election in the future is inefficient in terms of both money and time. 1 In the plebiscite, voters signed their name in different columns of a register in order to indicate whether they were answering the question in the affirmative or the negative The transition to contemporary popular-vote processes occurred gradually and unevenly throughout the nineteenth century, with ballot papers for French plebiscites adopted in 1851.³² This is significant for three reasons. First, making explicit the expectation that individual votes of the entire electorate would be counted together even if the entire nation could not assemble seems to reaffirm the idea that popular sovereignty rested

³¹ Ibid.

³² Kevin Duong, "What Was Universal Suffrage?," *Theory & Event* 23, no. 1 (2020): 29–65.

1 with the nation. Rousseau suggested that such an arrangement was superior to earlier practices or proposals that aggregated the decisions of smaller assemblies that might hold corporate interests.³³ Second, it may have created incentives for regularization. While assemblies could previously choose their own methods for voting and debate amendments separately, the transition to ballot-box voting creates incentives to present each voter with an identical yes-or-no question. When left to assemblies, the results could not always be effectively aggregated if votes were taken on essentially different questions or decisions were taken unanimously and no count of voters was provided. Third, it led to the emergence of the modern campaign.³⁴ Rather than having citizens deliberate about matters immediately prior to voting as part of an assembly, Rousseau seemed to prefer such informal deliberation.

2 Third, the method for replacing vacancies in the DPR/DPRD through political party deliberation is limited to board from the defunct political party. However, one of the obstacles to this mechanism is the provisions in Constitutional Court Regulation Number 12 of 2008 concerning Procedure Guidelines for the Dissolution of Political Parties in Article 10 paragraph (2) which explains that when a political party is dissolved, therefore it is prohibited for the former board of political parties to engage in any activity, particularly those involving politics. Thus, the Constitutional Court Regulations must be changed to eliminate this clause.

In the context of vacancies due to the dissolution of political parties, the two mechanisms above (stembus accord and plebiscite) are not suitable for use, because they have weaknesses, as follows:

a. *Stembus accord*

Some of the weaknesses of this mechanism include: 1) it will potentially cause polemics in parliament regarding which party is entitled to be given the constituent votes of the dissolved party; 2) it takes longer because it requires

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³³ Jean-Jacques Rousseau, *Considerations on the Government of Poland and on Its Planned Reformation, The Collec* (Hanover: Jean-Jacques Rousseau, 2005).

³⁴ Malcolm Crook, *How the French Learned to Vote: A History of Electoral Practice in France*, First edition (Oxford, United Kingdom: Oxford University Press, 2021).

agreement between political parties in parliament, while the vacant position must be filled immediately to avoid policy deadlock.

b. Plebiscite

Some disadvantages of this mechanism include: 1) Requires a relatively long time because it implements a runoff election; 2) Requires budget allocation for the implementation of supplementary elections; 3) Potential for policy deadlock due to vacancies in parliament that cannot be quickly filled.

Based on this description, the mechanism of political party deliberation has more legitimacy than the mechanism of stembus accord and plebiscite, both politically and socially. With the mechanism of political party deliberation, the potential for conflict between political parties in parliament can be reduced, including if there are differences in ideology and others. In addition, the mechanism of political party deliberation is only enough to be carried out by deliberation within the dissolved party, without having to go through a subsequent election mechanism.

Therefore, based on the description above, the author is more likely to agree with the mechanism of political party deliberation to fill vacancies due to the dissolution of political parties compared to the mechanism of stembus accord or plebiscite. Conceptually, the stembus accord mechanism should ideally only be used to fill vacancies in parliament due to the remaining seats, so that the determination of elected candidates is left to political parties based on mutual agreement.³⁵ While the plebiscite mechanism is more of a supplementary election mechanism due to the non-fulfillment of the number of seats in parliament.³⁶ The existence of a mechanism that comprehensively regulates the filling of vacancies in representative member positions through political party management deliberations is very necessary to ensure legal certainty, especially to ensure that the people's voice remains represented. As stated by Jan Michiel Otto, legal certainty can be realized if the following things are met:

³⁵ Komisi Pemilihan Umum, *Dinamika Hukum Pemilu Problematika Dan Implementasi Produk Hukum KPU* (Komisi Pemilihan Umum, 2022).

³⁶ Alberto Penadés and Sergio Velasco, "Plebiscites: A Tool for Dictatorship," *European Political Science Review* 14, no. 1 (February 2022): 74–93, <https://doi.org/10.1017/S175577392100031X>.

- 8
- a. There are rules that are clear, consistent, and easy to obtain, published by, and recognized by the state (power).
 - b. Ruling agencies (government) apply these legal rules consistently and submit and obey them.
 - c. Citizens in principle adapt their behavior to these rules.
 - d. Independent and unthinking judges (judiciary) apply these legal rules consistently when they resolve legal disputes.
 - e. Judicial decisions are concretely implemented.

One point to examine from Michiel Otto's perspective above is the availability of clear, consistent, and easy-to-obtain rules established and recognised by the state. It means that to avoid legal vacuums, specific laws regulating the method for replacing vacancies in the seats of members of representative bodies are required.

6

According to the standpoint of representative democracy³⁷, constituents have just the political right to choose representatives to the legislature, then their constitutional involvement ends there.³⁸ It creates legal uncertainty since the state will build a social structure that does not work in accordance with the preferences of the community. As a result, if there is a vacancy in the post of a member of parliament that has the potential to disrupt the community's interests or will, an ideal mechanism must be established because of the political party's dissolution. In addition, people should control government democratically because that is the only mode of control under which those reasons can be expected to guide government, which is recognized in common deliberation as the valuations relevant to determining public policy. This conception

³⁷ Indonesia does not expressly identify the representative democracy model as a concept in state administration. However, in the 4th Principle of Pancasila which states that: "Popularity Led by Wisdom in Deliberation/Representation" implies a model of representative democracy, and it be seen in several state administration practices through the authority of the House of Representatives (although not in all aspects, such as in general elections direct democracy model is used) (*"Democracy Led by Wisdom in Consultation/Representation" implies a model of representative democracy, and this can be seen in some practices of state administration through the authority of the DPR (although not in all aspects, such as in general elections where the direct democracy model is used)*).

³⁸ Wimmy Haliim, "Demokrasi Deliberatif Indonesia: Konsep Partisipasi Masyarakat Dalam Membentuk Demokrasi Dan Hukum Yang Responsif," *Jurnal Ilmu-Ilmu Sosial Indonesia Masyarakat Indonesia* 42, no. 1 (2016): 21, <https://doi.org/10.14203/jmi.v42i1.556>.

6 represents democracy, not as a regime for the expression of the collective will, but rather as a dispensation for the empowerment of public valuation.³⁹

Despite the fact that the deliberation procedure for political party board does not include the community directly, the discussion process to select which political parties will get constituent votes will go successfully. Not every country that has had elections can be considered democratic. According to Robert A Dahl, the signs of a democratic political system include the following:⁴⁰

- 4
- a. Control over governmental decision about policy is constitutionally vested in elected officials;
 - b. Elected official are chosen and peacefully removed in relatively frequent, fair. Free election in which coercion is quite limited;
 - c. Practically all adults have the rights to vote in these elections;
 - d. Most adults have the rights to run for public offices for which candidate run in these elections;
 - e. Citizens have an effectively enforced rights to freedom of expression, particularly political expression, including criticism of the officials, the conduct of the government, the prevailing political, economic, and social system, and dominant ideology;
 - f. They also have access to alternative sources of information that are not monopolized by government or any other single group;
 - g. Finally, they have and effectively enforced right to form and join autonomous associations, including political parties and interest group that attempt to influence the government by competing in elections and by other peaceful means.
- 24

Robert A. Dahl emphasised in general that the government cannot be freely allowed to make judgements based only on his/her conscience in a democratic political system. Disregarding the fact that free and fair elections are required to elect the government and that coercive measures must be prohibited, there is a right to choose and the right

28 ³⁹ Philip Pettit, "Depoliticizing Democracy," *Ratio Juris* 17, no. 1 (March 2004): 52-65, <https://doi.org/10.1111/j.0952-1917.2004.00254.x>.

⁴⁰ Ibid.

42 to vote for people who have met the conditions (adults), including citizens' right to express their political freedom, including criticising state authority, access to alternative sources of information that are not monopolised by the government or particular organisations, in the end, everyone has the same freedom to organise and become a member of autonomous organisations, such as political parties and interest groups with the goal of influencing the government⁴¹. Apart from that, the essence of democratic general elections is unrelated to whether they are held directly or indirectly. However, to the degree that the people participate in the general election. If we go over it again, the component votes offered are those of the persons who voted in the previous general election. Thus, general elections continue to accommodate people's votes.

Affan Gafar stated that a political order is considered democratic provided if it fits several criteria. Firstly, there is accountability, which requires elected officials to be able to account for the policies they want to pursue and have implemented. Second, there is power rotation, which requires that chances to change power always exist. Third, open political recruiting means that anybody who has the qualifications to fill a political post chosen by the people has an equal chance to compete for that position. Fourth, there are general elections in which every adult citizen can vote and be elected. Fifth, the usage of base rights means that every person has the right to openly express their thoughts, to congregate and associate, and to have access to freedom from pressure.⁴²

49 Henry W Ehrmann, in reference to democratic processes in numerous countries, offered two principles. First, *the balancing function of the separation power between government, parliament, and judiciary*. Second, *free choice of alternative is much important for the substantial participation of the people*.⁴³ Any nation's democratic political structure cannot overlook these two essential tenets. In order to prevent the ruling party from having a monopoly, then the authority must be limited. Thus, in this

⁴¹ James S. Fishkin, *The Voice of the People: Public Opinion and Democracy*, New ed. (New Haven: Yale University Press, 1997).

⁴² Michael Saward, "Democratic Theory and Indices of Democratization," in *Defining and Measuring Democracy*, (Sage Modern Politics Series, 1994).

⁴³ John Stuart Mill, *On Liberty: Perihal Kebebasan* (Jakarta: Yayasan Obor Indonesia, 2005).

instance, the establishment of a judicial institution is essential, and it can also promote equality between political parties by granting constituent votes.

Eventually, a democratic political system became a possibility, despite the fact that it had to meet a number of requirements. These requirements were difficult to meet for a variety of reasons, including the community's educational attainment and the importance of community political education in fostering a democratic political culture, the determination of power holders to establish a democratic political system, and the presence of laws that can be used as a tool to carry out a democratic political system.

John Stuart Mill, a notable British thinker, shared his thoughts on the necessity of political parties.⁴⁴ Mill stated that it is vital for political parties to decide or position their own representatives as state officials who can be dismissed based on societal interests. It is more effective to carry out this jointly through a party.⁴⁵ K.C. Wheare concurs with Mill, claiming that political parties are primarily a mechanism for citizens to observe or participate in governance by organising themselves. This organisation is founded on shared ideological viewpoints, economic, social, and other interests. However, what is more, crucial when organising a political party is the shared ambition to retain or grab political status or power.⁴⁶

In related to build a government system is inextricably linked to the development of a party system and an election system. If Indonesia's presidential government system is established in accordance with the 1945 Constitution, it must be systematically incorporated into the party system, legislative election system, and presidential election system, as well as tied to regional elections.⁴⁷

Political parties have an important strategic position and role in any democratic society. Parties serve as strategic liaisons between government processes and citizens. A lot of people believe that political parties are what determine democracy in the end.

⁴⁴ Deliar Noer, *Pemikiran Politik Negeri Barat* (Bandung: Mizan Pustaka, 1997).

⁴⁵ Kenneth Clinton Wheare, *Parlemen Dan Politik* (Jakarta: Jajasan Pembangunan, 1951).

⁴⁶ Ramlan Surbakti, *Memahami Ilmu Politik* (Jakarta: PT. Gramedia Widiasarana Indonesia, 1992).

⁴⁷ Asshiddiqie, *Kemerdekaan Berserikat, Pembubaran Partai Politik, Dan Mahkamah Konstitusi*.

Parties are therefore essential to boosting institutionalisation in every democratic political system.⁴⁸

4.2. Legal Reform for Assigning Vacancies in Representative Body Member Positions from Disbanded Political Parties: The Deliberation Mechanism of Political Party Board

In terms of discussing related to the solutions that will be offered regarding the concept of deliberation by former political party administrators. In terms of referring to the concept of minimizing constituent votes lost due to the implications of the parliamentary threshold, it must first be reviewed from the Constitutional Court Decision Number 116/PUU-XXI/2023 which has abolished the parliamentary threshold provisions. The constitutional court is often referred to as a centralized constitutional review system due to the fact that it has exclusive jurisdiction over constitutional disputes.⁴⁹ However, in its legal considerations, the Constitutional Court stated that:

“Party simplification policies either through the electoral threshold or parliamentary threshold are not prohibited by the constitution. Likewise, the amount of the threshold number is the authority of the legislator as long as it does not conflict with political rights, people's sovereignty, and rationality.”

But then, in the next legal considerations, the Constitutional Court has several basic arguments related to its rejection of the parliamentary threshold:

- a. did not find the basis for adequate methods and arguments in determining the amount of the number or percentage of the parliamentary threshold referred to, including the methods and arguments used in determining at least 4% (four percent) of the total number of valid votes nationally as specified in Article 414 paragraph (1) of Law 7/2017;
- b. Conversion of valid electoral votes so that election results are not categorized as disproportionate or disproportionate due to missing constituent votes.

In this case, there are two scenarios that must be considered. First, before the Constitutional Court's decision was issued, the implementation of the parliamentary

⁴⁸ Dewan Perwakilan Rakyat, “Parlementary Threshold,” DPR RI, 2018.

⁴⁹ Askari Razak et al., “Balancing Civil and Political Rights: Constitutional Court Powers in Indonesia and Austria,” *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023), <https://doi.org/10.15294/jils.v8i2.70717>.

16 threshold had been implemented, namely before 2023, meaning that there were still constituent votes that were wasted in the previous election. Therefore, these constituent votes were accommodated if a political party was dissolved. Secondly, in this consideration, the Constitutional Court did not consider the empirical consequences of multiparties and their participation in the implementation of general elections, in this case related to the purpose of the parliamentary threshold in order to create efficiency in governance because political parties in parliament are political parties that are well supported by the community, as evidenced by the votes or seats obtained through general elections. Therefore, the Constitutional Court's decision still does not have the right legal considerations to overcome the existing problems, so that the parliamentary threshold remains effective to be enforced.

62 In relation to fill the vacancies, the former political party board will deliberate. Several political parties that will be appointed as political party candidates and obtain constituent votes from former board of the dissolved political parties will be present at the discussion. The political parties mentioned were involved in the last general election but failed owing to the establishment of the parliamentary threshold (PT). The General Election Commission and The General Election Supervisory Agency are responsible for oversight.

3
3 The idea of deliberating political party board is to have former board of defunct political parties donate their constituents' votes to other political parties that do not achieve the bar for getting votes to seat in parliament. It is done to guarantee that the constituents of society are represented by members of the political party in question. It goes without saying that the political parties receiving constituent votes are those that ran in the last election but were unable to win enough seats to be in parliament. due to parliamentary threshold. The point is that citizen assemblies and other deliberative institutions can strengthen representative democracy. Restoring public trust requires several factors. This can be implied that citizens must feel that their voice matters; the answer to this is creating deliberative mini-publics in which the government is invested. The process itself builds trust in the political process and helps narrow the political legitimacy gap. And of course, it produces that same evidence which can then be used within the debate and for debunking and fact-checking by

3 media in later reporting.⁵⁰ On the other hand, people have started to expect more from democracy than just the opportunity to vote for a party every few years. Participation is growing: not just in signing petitions (see the six million who signed a Brexit petition, for example) but also in social movements, NGOs, and other sorties. These trends suggest that there is public appetite to be more involved and to narrow the representation gap. Rising public cynicism and declining public trust suggests that such involvement is critical.

A number of factors are taken into account when allocating constituent votes to political parties that fall short of the requirements for House of Representatives seats, including:

- a. If constituent votes are allocated to the political party that receives the most votes in the general election, it is believed that the major parties would dominate parliament.
- b. If constituent votes are granted to one of the coalition member parties, there is concern that this may lead to strife within the alliance as the dismissed representative members compete for seats.

From the two considerations above, the most ideal according to the author is to give constituent votes to the party with the highest votes but which does not pass the threshold for obtaining votes to sit in parliament.

Reflecting on the past, there are undoubtedly a number of issues that society has about the legislative threshold system. In Indonesia, for instance, the general public and those interested in politics and elections may wonder where the votes of political parties that fall short of the threshold go. Thus, the consequences of implementing this threshold are that political parties' votes are automatically lost/forfeited, and these votes cannot be counted; only political parties that meet the predetermined threshold can be included in reaching the national vote threshold in gaining seats in parliament. While through the existence of elections, even if they do not include voting on an issue, it still

21 ⁵⁰ David M. Farrell and Jane Suiter, *Reimagining Democracy: Lessons in Deliberative Democracy from the Irish Front Line* (Ithaca: Cornell Selects, an imprint of Cornell University Press, 2019).

can be represented through the House of Representatives.⁵¹ This is where the regulations listed above fall short, because votes cast for political parties that do not pass the parliamentary threshold are rarely considered. Considerations should always come first when making judgements or enacting rules, since a person's choice of political party is mostly based on how well their policies align. which is being battled for, and this gravely violates voters' human rights, which are acknowledged in the laws and regulations.⁵²

7 Naturally, another implication of the parliamentary threshold is that it will open doors for other political parties that fall short of the threshold by allowing constituent votes to be used to fill openings in representative body posts. Keeping in mind that, while constituent opinions must still be heard urgently, their appropriate implementation is hindered by the consequences of the parliamentary threshold, a concept aimed at streamlining political parties. Equal electoral influence should be a justified democratic ideal. This means that equal electoral influence does not justify itself: equal influence is not something we have reason to value intrinsically. In pushing for more equal electoral influence, we should be able to point to the democratic value or principle that equal electoral influence is meant to realize or approximate.⁵³

Thus, the execution of deliberations by the former board of a defunct political party addresses these issues while taking into account the quality of the cadres nominated. Considering that the constitution's provision for constituent votes must be upheld. This is in keeping with Ejan Mackaay's assertion that one of the institutions that distinguish democracy from tyranny and dictatorship is the fundamental rights outlined in the constitution.⁵⁴ This implies that citizens' voting rights, which have been channelled into the election of members of parliament, should not be overlooked because of the consequences of political party dissolution.

46 ⁵¹ Gregory T Papanikos, "Democracy and Politics: An Introduction to the Special Issue of the Athens Journal of Social Sciences," *Athens Journal of Social Sciences* 9, no. 2 (2022): 89–94.

63 ⁵² Fajlurrahman Jurdi, *Pengantar Hukum Pemilihan Umum* (Jakarta: Prenadamedia Group, 2018).

45 ⁵³ Andrei Poama and Alexandru Volacu, "Too Old to Vote? A Democratic Analysis of Age-Weighted Voting," *European Journal of Political Theory* 22, no. 4 (October 2023): 565–86, <https://doi.org/10.1177/147488512111062604>.

⁵⁴ Ejan Mackaay, "The Emergence of Constitutional Rights," *Constitutional Political Economy* 8, no. 1 (1997): 15–36, <https://doi.org/10.1023/A:1009085821049>.

2 The importance of targeting political parties that have participated in prior elections stems from the fact that popular sovereignty can only be legitimised through this process. It is obviously a step towards ensuring that people continue to be active in filling gaps in positions of representatives who are dismissed as a result of the dissolution of political parties. In other terms, the electoral system is the interaction between numerous factors that convert voters' votes into seats for elected candidates in the legislative and executive branches. In other words, the electoral system is a set of factors that govern the battle for power.⁵⁵ In layman's terms, an electoral system is an instrument that converts election votes into seats won by a party or candidate. The electoral formula, ballot structure, and district magnitude are among the most commonly utilised fundamental variables.⁵⁶

A deliberation of former political party can also address issues with the execution of the parliamentary threshold. It is strengthened by the Constitutional Justice named M. Akil Mochtar, who backs up this claim. He stated that the 1945 Constitution had placed "the principle of popular sovereignty" as "the main principle of the constitution" and concurrently evolved into "constitutional morality" which not only gave spirit, colour, and influence in determining various forms of legislation in the political field but also provided "the character and colour of separately" to the form of government; General elections as a means of democracy in order to realise "the number of votes that the people cast for their elected representatives must be considered in accordance with the popular sovereignty concept". The magnitude of the popular mandate bestowed upon the chosen candidate indicates the high degree of strong political legitimacy of the candidate in question; consequently, winning strong popular legitimacy automatically fortifies accountability, which in turn facilitates the easier assimilation of the will of the people they represent; Akil claims that the party should be proclaimed to have no binding legal force since it violates the 1945 Constitution, which is the rationale behind the party's simplification in order to support the presidential system.

16 ⁵⁵ Muhamad Doni Ramdani and Fahmi Arisandi, "Pengaruh Penggunaan Sistem Pemilihan Umi-Jm Dewan Perwakilan Rakyat Proporsional Daftar Terbuka," *Jurnal RechtsVinding* 3, no. 1 (2014): 101–11.

⁵⁶ Minutes of the Constitutional Court Session on Case Number 3/PUU-VII/2009 Concerning Law No. 10 of 2008 concerning the General Election of Members of the House of Representatives, Regional Representative Board, Regional House of Representatives against the 1945 Constitution.

Due to the fact that the aforementioned causes result in unfair treatment, create legal ambiguity, and promote injustice, all of which are against Article 28D, paragraph (1) of the 1945 Constitution.⁵⁷ It obviously was done to accommodate the voices of constituents who could not be conveyed because members of their representative bodies were dismissed from the board because their political parties were disbanded and also the voices of constituents which were hampered due to the enactment of parliament.⁵⁸

9 The State of Taiwan was another nation that practiced dismissing parliamentarians from political parties that had dissolved. As referred to in Article 30-I Taiwan's Procedure Act states: The members of the elected bodies appointed to the dissolved party in accordance with the proportional representative system shall be deprived of their membership immediately upon the judgment's becoming effective (Anggota badan yang dipilih yang ditunjuk oleh partai yang dibubarkan sesuai dengan sistem perwakilan proporsional harus segera dicabut keanggotaannya setelah putusan mulai berlaku).

2 On the other hand, the structures and methods for disbanding political parties in various nations should be considered. Several nations have abolished political parties due to constitutional infractions, including Indonesia, Taiwan, Pakistan, Germany, Afghanistan, Bulgaria, South Korea, Turkey, and Thailand.⁵⁹ As a result of the dissolution of political parties in several countries, one of them is the dismissal of members of parliament from disbanded political parties as regulated in Article 30-I of the Taiwan Procedure Act which explains that members of parliament from disbanded parties will have their membership revoked immediately after the dissolution of the political party is decided. In Article 16 Paragraph 2 of The Political Parties Order Pakistan not only regulates the dismissal of members of parliament from disbanded political parties but also provides additional sanctions in the form of a ban on participating in general elections for four years from their dismissal. In the meantime,

18 ⁵⁷ Muchamad Ali Safa'at, *Pembubaran Partai Politik: Pengaturan Dan Praktik Pembubaran Partai Politik Dalam Pergulatan Republik*, Cet. 1 (Jakarta: Rajawali Pers, 2011).

⁵⁸ Eva Erman, "The Boundary Problem of Democracy: A Function-Sensitive View," *Contemporary Political Theory* 21, no. 2 (2022): 240–61.

⁵⁹ Ibid.

while Germany does not have any laws governing the legal ratifications for the status of parliamentarians from parties that have dissolved. However, in practice the dissolution of the Socialist Reich Party (German Socialist Party) and Kommunistische Partei Deutschlands (German Communist Party) resulted in the dismissal of all members of parliament from the disbanded political parties.⁶⁰

It is also crucial to remember that this political party serves as the primary means of facilitating to bridge the voices between the public and the government. Political parties are essential to the functioning of a democracy. Only in the presence of an organiser based on state goals can decisions be made in an orderly manner. Political parties are responsible for organising people's aspirations into more systematic public opinion, which may then serve as the foundation for orderly decision-making.⁶¹ Furthermore, in modern state, the number of voters is so enormous and diverse, hence it is important to manage them to make judgements. Thus, political parties have a significant influence in the selection process for both people and policy content.⁶² It anticipates that there will be a vacancy in office for a long time if the appointment of replacement members of the representative body is then carried out through a re-election, resulting in a prolonged policy death lock.

With regard to deliberations between former political party board and others, in general, political scientists usually describe this as contained in 4 (four) functions of political parties. According to Miriam Budiardjo, the four functions of political parties include facilities: (i) political communication, (ii) political socialization, (iii) political recruitment, and (iv) conflict management. In the terms of Yves Meny and Andrew Knapp, the functions of political parties include (i) mobilization and integration; (ii) means of forming influence on voting behavior (voting patterns); (iii) means of political recruitment; and (iv) a means of elaborating policy options. These four functions are equally related to one another. As a means of political communication, parties play a very important role in efforts to articulate the interests (interests articulation) or political interests that exist or sometimes are hidden in society. These various interests

⁶⁰ Kranenburg and Sabaroedin, *Ilmu Negara*.

⁶¹ MacIver, *The Modern State*.

⁶² Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Ikhar Mandiriabadi, 2008).

12 are absorbed as best as possible by political parties into ideas, visions and policies of the political party concerned. After that, the ideas and policies or policy aspirations are advocated, thus they can be expected to influence or even become official state policy material.

This is similar to the implementation of deliberations between former political party and others who will later elaborate on ideas with each other regarding political recruitment to be used in filling vacancies in the positions of members of representative bodies who are dismissed because they come from disbanded political parties. Then the implementation of these deliberations will be carried out only through former political party who are potential recipients of constituent votes.

5. Conclusion

There are three mechanisms for filling vacancies in the positions of members of representative bodies as explained by Ni'matul Huda, namely the stembus accord mechanism, the plebiscite mechanism, and the deliberation mechanism for political party board. The discussion process for the political party board is the most ideal of the three methods in terms of both efficacy and political relevance. Comprehensive regulation is necessary to provide legal certainty and the continued representation of the public interest in the process of political party deliberation for filling vacancies in representative body seats. The existence of unambiguous norms is one sign that legal certainty may be achieved, as stated by Jan Michiel Otto.

53 The idea of deliberation for political party board is carried out by means of board of disbanded political parties giving their constituents' votes to other political parties that do not meet the threshold for obtaining votes to sit in parliament. This is done to ensure that the constituents of society are represented by members of the political party that has been issued. The political parties that will be given constituent votes are political parties that participated in the previous election but failed due to obstacles in terms of parliamentary threshold. The reason constituent votes are not given to other political parties, such as the political party that gets the most votes in the general election, or to one of the coalition member parties is to avoid domination by large parties and internal conflict in the disbanded political party coalition.

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