

# Legal Construction of Filling Vacancies in Representative Office Positions Due to Dissolution of Political Parties

*by Nur Putri Hidayah*

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## Conference Paper

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**Legal Construction of Filling Vacancies in Representative Office Positions Due to Dissolution of Political Parties****Fitria Esfandiari\*, Ana Fauzia, Nur Putri Hidayah, Isdian Anggraeny, Kukuh Dwi Kurniawan, Sholahuddin AlFatih**

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**1**  
**Abstract.**

Political parties are part of the embodiment of democracy. In the political context, its existence is very important as a liaison between a sovereign government and the people it leads. The Constitutional Court has the authority to dissolve political parties in Indonesia. So that there are 3 types of rulings in applying for the dissolution of a political party by the government to the Constitutional Court, one of which is that the application is granted. If the request is granted, in its decision the panel declares to dissolve and cancel the legal entity status of the political party. The implication is that the government removes these political parties from the list of political parties owned by the government. Furthermore, the dissolution of the political party has legal consequences, one of which is the vacancy of positions in the seats of representatives/legislators who are left behind. This study aims to examine the legal implications of the dissolution of political parties and the mechanism for filling vacancies in representative bodies. The method used is normative research using a statutory approach and a conceptual approach. The results of the study indicate that the legal implication of the dissolution of a political party is the existence of a vacancy in the representative body. Meanwhile, there is no comprehensive arrangement for overcoming the vacancies left by members of the legislature due to the dissolution of the political party.

**Keywords:** legal construction, position vacancies, dissolution of political parties**1. INTRODUCTION**

One of the growing demands of society in the reform era is in the field of legal reform which leads to the realization of the rule of law. As a legal state with the highest sovereignty in the hands of the people, general elections have a very important position in democratic life [1]. The constitution functions as an effective basic reference in the process of administering the state and also the lives of its people. One of the efforts that can be made to realize an effective legal system is the restructuring of legal institutions [2]. The Constitutional Court as the Guardian of the Constitution has the authority to protect the constitutional rights of citizens [3]. One of its powers is related to the

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dissolution of political parties. However, this authority has never been implemented since its establishment.

In building an ideal legal state, the law should be understood and developed as a unified system. Moreover, the state wants to be understood as a legal concept, namely as a "State of Law". Therefore, it is true what is expressed by Lawrence Friedman in his book *The Legal System: A Social Science Perspective* that to build a legal system, it must be based on three main elements. The three main elements are legal substance, legal structure (procurement organization and its enforcement), and the third is legal culture which is also a significant determinant of whether or not law is meaningful in national life from time to time [4].

In the context of building an ideal legal state based on the legal system described by Lawrence Friedman, it is not enough to improve the legal system only from the legal structure, legal substance, or legal culture alone, but all three [5]. Because in building an ideal legal system, it is very important to carry out or make a legal construction if the existing law is still not able to answer the problems or problems that exist in the dynamics of the state administration.

One of the problems in the context of state administration is related to the dissolution of political parties. Although since the birth of the Constitutional Court there has been no disbandment of political parties, this does not mean that it can be used as an excuse that improvements to the regulations for the dissolution of political parties have not been carried out. In the 4th precept of Pancasila which reads "Popularity Led by Wisdom in Deliberation/Representation", emphasizes that the State of Indonesia adheres to a democratic system that puts forward the principle of deliberation for consensus which is interpreted through representatives and state representative bodies to fight for the people's mandate. According to Jimly Asshiddiqie, political parties are one of the main pillars of democracy in Indonesia. Because in a country that adheres to democracy, it is formed on a party system [6].

The development of parties in Indonesia can not only be seen from the rapidly growing quantity of political parties participating in the election contestation.[7] But also how a political party is able to carry out its functions in accordance with the values of the nation's agreement contained in the constitution. Muchamad Ali Syafaat termed it as the constitutionalization of political parties [6]. The existence of political parties in a democratic country has a very essential role. The existence of political parties has bridged between the state (the state) and the citizens (the citizens). Another role of political parties in a democratic country is to ensure that the principle of checks and balances runs between branches of state power. In a country that does not carry out

the check and balances function properly, it is certain that the political party that wins the political constellation is a party that is greedy and does not have good integrity [8].

The main function of political parties is actually occupying certain positions (power) to carry out certain ideological goals [9]. Miriam Budiarjo stated that political parties have 4 important roles/functions including: (1) political communication facilities; (2) means of political socialization; (3) political recruitment; (4) conflict manager [10]. On the other hand, the constitution also provides limits to political parties so that they are not arbitrary and even violate the constitution. The form of the limitation is by giving the Constitutional Court the authority to disband a political party for constitutional reasons as regulated in Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), that the Constitutional Court present to be the institution that decides regarding the dissolution of political parties and also regulates the reasons for the dissolution.

There are 3 types of decisions in submitting an application for the dissolution of a political party by the government to the Constitutional Court, firstly, the application is rejected, meaning that the political party is not declared to be in conflict with the constitution and can still carry out its party activities, this is because the reason for the application submitted by the government is considered unreasonable by the government. panel of judges. The second is unacceptable, this decision is about the non-fulfillment of the formal requirements of the application submitted by the government, and the third is that the application is granted meaning that the government's application is considered quite reasonable by the assembly [8]. If the request is granted, in its decision the assembly declares to dissolve and cancel the legal entity status of the political party, and instructs the Government to remove the political party from the list of political parties owned by the government [11].

With regard to the legal consequences of dissolving a political party by the Constitutional Court, then one of the legal consequences is related to legal relationships that have been carried out by political parties before being dissolved. One of the most basic legal relationships that a political party has carried out is to become an election participant to bring its representatives to sit as members of the DPR [12]. Referring to this, Jimly Asshiddiqie explained, if the election participants, which in this case are political parties, were later dissolved, it would legally affect the membership status of the elected members of the DPR from the political party in question [13]. With the provisions for the dissolution of a political party, it can certainly lead to the possibility of dismissal related to the status of members of the council from that party.

Not only to regulate the dissolution and the mechanism, but the Constitutional Court also has the authority to regulate the legal consequences of the dissolution of a political

party. However, how the mechanism in responding to legal consequences such as when there is a vacancy in the representative body due to the dissolution of a political party is still unclear or it can be said that there is no normative regulation. Of course, this condition must be responded to immediately, because vacancies in the legislative body due to the dissolution of political parties can lead to policy deadlocks or obstacles to the duties and responsibilities of the legislature, especially in carrying out the check and balance function. So in this case it can be seen that there is still a legal vacuum, especially in terms of legal substance as described by Lawrence Friedman. Therefore, this research will examine the legal consequences of dissolving political parties and the mechanism for filling vacancies in representative bodies when dismissed.

## 2. METHODOLOGY/ MATERIALS

This legal research uses normative research or doctrinal legal research. While the approaches in this research include the statutory and conceptual approach. As for what is meant by a statutory approach, namely examining a problem with legal materials in the form of statutory regulations as the main or basic material in carrying out research [14]. Then the conceptual approach is to examine a problem by providing a point of view or analysis of problem solving in terms of aspects of the legal concepts behind it or the values contained in the norming of a regulation [15].

## 3. RESULTS AND DISCUSSIONS

The dissolution of a political party has legal consequences for the activities surrounding the political party, including the prohibition of the right to life of political parties and the use of party symbols in Indonesia, the expropriation of the wealth of political parties by the state, the prohibition of political activities for former political party administrators and even dismissal. membership of DPR and DPRD members of disbanded political parties. This means that if a political party is dissolved there will be seats for representatives/legislators left behind [8]. This is as stipulated in Article 10 paragraph (2) letter b of the Constitutional Court Regulation No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties which essentially states that, "the dismissal of all members of the DPR who are from the disbanded political parties".

Seeing that political parties have a major task in the governance of democratic life in Indonesia, namely to bridge the gap between the government and its citizens, it is not surprising that this condition strengthens the relationship between the people's

representatives and their political parties. Because to sit in Parliament, people's representatives are elected directly by the people through an electoral system whose participants are political parties as stipulated in the constitution. The strong relationship between political parties and people's representatives is reflected in several provisions of laws and regulations, including:

1. Provisions regarding dismissal as a member of the DPR RI if a member of another political party is regulated in Article 239 paragraph (2) letter h of Law no. 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council
2. Provisions regarding the dismissal of a member of parliament if the person concerned is dismissed as a member of a political party is regulated in Article 16 paragraph (3) of the Political Party Law; and
3. The provisions regarding the right of political parties to propose the replacement and dismissal of their members in parliament or commonly called the recall rights of political parties are regulated in Article 239 of Law no. 2 of 2018 & Article 12 letters g and h of Law no. 2 of 2011 (Political Party Law).

The provisions regarding recall rights are strengthened by the Constitutional Court Decisions Number 008/PUU-VI/2006 and 38/PUU-VIII/2010. In its judgment, the Court is of the view that the possession of recall rights by political parties is a consequence of the provisions of the 1945 Constitution of the Republic of Indonesia, which indeed gives a significant role to political parties in the constitutional system.

Recall rights are rights granted to political parties to enforce discipline on their members in representative institutions so as not to deviate from the Articles of Association/Budgets and related political party policies. Furthermore, the Constitutional Court is of the view that the entry of a person to become a member of a political party is a voluntary choice to comply with the rules and policies of the political party, including voluntarily accepting sanctions if one day his actions are contrary to the rules and policies that have been outlined by the political party.

This view is in accordance with the provisions of Article 14 paragraph (2) of the Political Party Law which can be interpreted that a person who joins as a member of a political party is a person who has the same will and ideals with the political party so that he is voluntarily willing to comply with the AD/ ART and the policies of the political party. With this thought, it can be seen from the reason for the dissolution of a political party, namely,

if the political party has ideology, principles, goals, programs, activities, as a result of activities that are contrary to the 1945 Constitution of the Republic of Indonesia or the political party adheres to, develops, and disseminates the teachings of communism [16], then the reasons for the dissolution of a political party cannot be separated from the role of the members of the political party.

Thus, if there is a political party that is dissolved by the Constitutional Court because it is proven to have committed a constitutional violation, then all members of the political party must also be responsible, especially members of the DPR RI from the disbanded party, with the dismissal of the member of the DPR RI from his position because he is a member of the DPR RI. a political party that is contrary to the constitution and he voluntarily participates in conflict with the constitution.

Although the Constitutional Court has regulated the legal consequences of the dissolution of political parties in the Constitutional Court Regulation No. 12 of 2008 concerning Procedures Guidelines. However, there is no regulation regarding the mechanism for filling legal vacancies when a member of a representative body is dismissed because the political party that nominated him was then disbanded. In fact, there are several regulations that are closely correlated with filling vacancies by representative bodies. However, these laws and regulations are still not sufficient to answer the problems related to the vacancy in question, namely the representative bodies that have been dismissed as a form of juridical consequence when the political party has been dissolved.

The regulation referred to that still has a close relationship with the dissolution of political parties is Law no. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council (UU MD3). In this law, there is still no comprehensive discussion regarding the mechanism regarding filling vacancies when a political party is disbanded. The dissolution of the political party had a major impact on the position of the representative body itself.

As for Law no. 2 of 2011 concerning Political Parties (Law on Political Parties) has also not been regulated regarding the dissolution of political parties. The existing arrangements are only limited to the procedure for dissolving a political party, namely when a political party combines with another political party, the political party on its own will wants to dissolve and also when the political party is dissolved by the Constitutional Court itself. The same thing also happened to the Law on the Constitutional Court, namely Law Number 23 of 2004 (UU MK) which only talked about the requirements

for a person to become an applicant and also related to <sup>8</sup> the implementation of the Constitutional Court's decision regarding the dissolution of political parties.

From the various existing laws and regulations, it is clear that there is no normative regulation that regulates the mechanism for filling vacancies when the representative body is dismissed. This happens both implicitly and explicitly. This means that legal reforms should be carried out in terms of comprehensively regulating the dissolution of political parties and the mechanism for filling vacancies. Although until now there has been no submission regarding the dissolution of political parties, it is still necessary to regulate the mechanism for filling vacancies because this is not the case nothing is possible in the future. Moreover, this is related to optimization in terms of channeling people's aspirations. If then the representative body, namely the DPR/DPRD, is later late in responding to <sup>4</sup> the legal consequences of the dissolution of political parties, then this will have an impact on not achieving a quorum which has an impact on the distribution of people's aspirations which is then stopped because some of the representative bodies have been dismissed due to <sup>15</sup> the legal consequences of the dissolution of the party. the politics [17].

In addition, this <sup>16</sup> condition automatically also has an impact on the rights of the community where the people have the right to participate in running the country or overseeing the course of power either directly, for example through the public sphere or through their elected representatives. in a fair and honest manner with a government that is run solely for the benefit of the people [18].

Then the existence of a vacancy will also have an impact on the implementation of the duties and authorities of the DPR. In this case, the DPR has various powers and duties regulated in the MD3 Law. So the vacancy of the position can lead to ineffectiveness in the parliament in realizing the will of the people. The ineffective implementation of the powers and duties of the DPR will also have implications for the people's votes that have been entrusted to their representatives who will be dismissed through the decision of the Constitutional Court regarding the dissolution of political parties. This clearly causes a defect in representative democracy which should be able to run according to the expectations of all aspects of society.

<sup>12</sup> Democracy is a system of government in a country where citizens have the right, obligation, position and power both in carrying out their lives and in participating in state power, where the people have the right to participate in running the country or overseeing the course of power, namely through their representatives. in Parliament. So, if you want to prevent confusion in the mechanism for dissolving political parties by the Constitutional Court in Indonesia, it is necessary to immediately find the right



solution so that in the future when <sup>8</sup> the Constitutional Court issues a final and binding decision on the dissolution of political parties, it does not cause confusion as to its implications. both administratively and procedurally.

### 3.1. Mechanism of Filling Position Vacancies Due to Dissolution of Political Parties

As stated by Ni'matul Huda, that in terms of the mechanism for filling vacancies as a result of the dissolution of political parties, the mechanism that can be applied is by conducting a stembus accord, plebiscite and also using mechanisms by utilizing the internal processes of political parties, namely by conducting deliberation. carried out by the administrators of political parties. With regard to the mechanism in terms of implementing the stembus accord, initially this mechanism was applied in the case when there was voting when the people did not vote. This is done in the form of when the parliamentary threshold is not met in the electoral threshold. However, this time the stembus accord will be applied in terms of filling the vacant seats from the DPR/DPRD itself. The stembus accord mechanism itself is enforced with the first, namely a prior agreement between political parties. This agreement is enforced by first classifying political parties with the same platform. This agreement is intended for political parties with each other so that they can always support each other in terms of meeting the threshold set out in the parliamentary threshold. The second mechanism in the case of a stembus accord is applied when there is a member of the DPR/DPRD whose origin is from a political party that has been dissolved and then stops, then the member of the disbanded political party is then replaced with a proposed member from a political party. The political parties referred to here are political parties originating from their participation as participants in the stembus accord [19].

The second mechanism relates to the mechanism for filling office seats with a plebiscite mechanism. This mechanism is the most appropriate mechanism in terms of filling vacancies in terms of filling dismissed members of the DPR/DPRD. This is because this mechanism still guarantees transparency to the people because the people are still involved in their participation. In addition, this mechanism still involves the participation <sup>2</sup> of political parties in carrying out their intermediate functions. This plebiscite mechanism is carried out by being preceded by political parties expressing their respective opinions in the hope that these opinions can win each other's constituents. These constituents will come from political parties that have been disbanded. In general, the details of this plebiscite mechanism have an implementation model that is almost similar to the

post-election mechanism. However, the difference lies in the designation. The purpose or designation of the follow-up mechanism is to determine who is the representative, but the allocation in the plebiscite mechanism is the exchange of opinions <sup>3</sup> related to the names of political parties. Of course, referring to the applicable constitution, namely as in Article 22 E <sup>2</sup> of the 1945 Constitution of the Republic of Indonesia, that the implementation of this plebiscite is in accordance with the principle of holding general elections held simultaneously. This is because in the implementation of the plebiscite, there is no general election that is held either after or repeated [20].

The third mechanism relates to filling vacancies from the DPR/DPRD which is carried out through a deliberation mechanism. This deliberation mechanism is enforced by involving only the administrators of the disbanded political party. However, the mechanism still encounters obstacles because the Constitutional Court Regulation No. 12 of 2008 concerning Procedures for Dissolution of Political Parties Article 10 paragraph (2) has explained that when a political party is dissolved, former political party administrators cannot carry out any activities, especially all matters relating to political actions. So, to avoid this, it is necessary again to amend the phrase of the Constitutional Court Regulation. Then, another obstacle is that this mechanism cannot involve the participation of the community regarding decision making [20].

Broadly speaking, the most effective thing in terms of regulating the filling of vacancies in the positions of members of the DPR/DPRD because the political party is disbanded is by revising the laws relating to the party system in Indonesia. An example is the Political Party Law, by adding a separate chapter that regulates comprehensively and in detail the mechanism for filling vacancies resulting from the dissolution of political parties [20].

#### 4. CONCLUSION AND RECOMMENDATION

First, the legal implications <sup>3</sup> for the dissolution of political parties are the existence of vacancies in representative bodies which can have a broad impact on the implementation of the democratic process in Indonesia, especially on the implementation of the people's will. Meanwhile, until now there is no normative regulation that regulates the mechanism for filling vacancies when the representative body is dismissed. Second, the legal construction or mechanism that can be applied to fill vacancies in Parliament is to carry out a stembus accord, plebiscite mechanism, and also to use the internal mechanism of political parties, namely by conducting deliberations between political party administrators.

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#### 1. INTRODUCTION

One of the growing demands of society in the reform era is in the field of legal reform which leads to the realization of the rule of law. As a legal state with the highest sovereignty in the hands of the people, general elections have a very important position in democratic life [1]. The constitution functions as an effective basic reference in the process of administering the state and also the lives of its people. One of the efforts that can be made to realize an effective legal system is the restructuring of legal institutions [2]. The Constitutional Court as the Guardian of the Constitution has the authority to protect the constitutional rights of citizens [3]. One of its powers is related to the

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