DEGENERATIVE SYSTEM OF POPULAR SOVEREIGNTY BY POLITICAL PARTIES THROUGH THE INSTRUMENT OF THE RECALL RIGHTS

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Abstract

The existence of the term "party officials" which is increasingly blatant, seems to normalize the power of political parties by party leaders who are subjectively able to subordinate their members who are in government. Several cases indicate a shift in popular sovereignty towards political party sovereignty through the instrument of recall rights. This becomes a problem regarding the position and portion of people's votes in general elections which can be negated by political parties. This research uses doctrinal research methods as well as legal and conceptual approaches. The results of the study show that: first, the existence of the instrument of political party recall rights can be degenerative to the essence of popular sovereignty that has been running through the general election mechanism, this is because the existence of political party recall rights causes a shift in popular sovereignty to political party sovereignty. Second, the constitutionalization of the dismissal of legislative members is an effort of preventive legal protection in maintaining popular sovereignty based on the constitution (constitutional democracy). Therefore, it is necessary to increase a high level of commitment in providing certainty of provisions for the dismissal of legislative members in the constitution.

Keywords: Recall Rights, Political Parties, Popular Sovereignty.

I. INTRODUCTION

The existence of a state of law cannot be separated from a democratic system, so that there is a very significant correlation between a state of law and popular sovereignty. Democracy without legal regulation will lose direction, while law without democracy will lose meaning.[1] Indonesia as a country that adheres to popular sovereignty, is explicitly stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia[2] formulating that "Sovereignty lies in the hands of the people and is implemented according to the Constitution". In the 1945 Constitution, popular sovereignty is implemented through a representative system. Jimly stated that "popular sovereignty with a representative system or ordinary democracy is also called a representative democracy system or indirect democracy."[3]

[1] H.S. Tisnanta & Fathoni, *Hukum Dalam Lingkaran Krisis*, (Bandar Lampung: Justice Publisher, 2023), p. 27

[2] Hereinafter referred to as the 1945 Constitution.

[3] Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara Indonesia*, (Jakarta: Sekjen Kepaniteraan Mahkamah konstitusi, 2006), p. 328. According to Jimly: "the relationship between the people and the state power in everyday life usually develops on the basis of two theories, namely the theory of direct democracy where the sovereignty of the people can be carried out directly in the sense that the people themselves exercise the highest power they have, and the theory of indirect democracy (representative democracy). In the modern era today with the complexity of the

The idea of popular sovereignty must still be guaranteed that the people are the real owners of the country with all their authority to carry out all functions of state power, both in the legislative, executive and judicial fields. It is the people who are actually all activities aimed at and intended for all the benefits obtained from the existence and functioning of state activities, only this concept of sovereignty is carried out through the procedure of people's representation.[4]

In the practice of state administration, the filling of people's representatives is carried out through general elections. General elections are an instrument to realize the sovereignty of the people which is intended to form a legitimate government and a means of articulating the aspirations and interests of the people.[5] Article 22E of the 1945 Constitution is the constitutional basis for general elections. General elections according to the provisions of Article 22E paragraph (2) of the 1945 Constitution are held to elect members of the People's Representative Council (DPR), Regional Representative Council (DPD), President and Vice President and Regional People's Representative Council (DPRD).

The recruitment process for DPR and DPRD membership in Indonesia is based on or based on political parties, therefore there is not a single member of DPR and DPRD who is not affiliated with a political party.[6] In addition to being elected, members of the DPR and DPRD can also be dismissed from their positions. Provisions regarding the interim dismissal of members of the people's representative institutions (DPR & DPRD) are regulated in Article 239 paragraph (1) and (2), Article 355 paragraph (1) and (2), and Article 405 paragraph (1) and (2) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council, as last amended by Law Number 13 of 2019 (UU-MD3).

Article 239 paragraph (1) of the MD3 Law stipulates that: "DPR members are dismissed interim due to: death; resignation; or dismissal." Furthermore, the provisions of Article 239 paragraph (2) of the MD3 Law further explain that DPR members are dismissed interim if:[7]

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problems faced, the teaching of indirect democracy, or often called representative democracy, is becoming more popular now. Usually the implementation of this sovereignty is referred to as a representative institution." Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat Dalam Konstitusi dan Pelaksanaannya Di Indonesia*, (Jakarta: PT Ichtiar Baru Van Hoeve, 1994), p. 70.

[4]Jimly Asshiddiqie*, Konstitusi Dan Konstitusionalisme Indonesia,* (Jakarta: Penerbit Sekretariat Jenderal dan Kepaniteraan MK, 2005)*,* p. 141-142

[5] Ibnu Tricahyo, *Reformasi Pemilu Menuju Pemisahan Pemilu Nasional dan Lokal*, (Malang: In-Trans Publishing, 2009), p. 6.

[6] Article 22E paragraph (3) of the 1945 Constitution.

[7] This provision is similar to the dismissal of DPRD members, only there is an additional 1 point for DPRD members, namely "not attending plenary meetings and/or meetings of the DPRD's supporting apparatus for the district/city which are their duties and obligations 6 (six) times in a row without a valid reason."

a. unable to carry out duties continuously or permanently prevented from being a member of the DPR for 3 (three) consecutive months without any explanation;
b. violating the oath/promise of office and the DPR code of ethics;
c. found guilty based on a court decision that has obtained permanent legal force for committing a criminal act that is punishable by imprisonment of 5 (five) years or more;
d. proposed by his/her political party in accordance with the provisions of laws and regulations;
e. no longer meets the requirements as a candidate for DPR member in accordance with the provisions of laws and regulations concerning the general election of members of the DPR, DPD and DPRD;
f. violating the provisions of prohibitions as regulated in this Law;
g. dismissed as a member of a political party in accordance with the provisions of laws and regulations; or
h. becoming a member of another political party.

There is something interesting in the provisions on the interim dismissal of members of the DPR and DPRD, namely regarding the reasons for dismissal if proposed by their political party, and being dismissed as a member of a political party in accordance with the provisions of statutory regulations. This provision, apart from being regulated in the MD3 Law, is also contained in Article 16 paragraph (1) of Law Number 2 of 2008 concerning Political Parties, as amended by Law Number 2 of 2011[8], which stipulates that: "Members of a Political Party will have their membership of the Political Party terminated if: a) they die; b) they resign in writing; c) they become members of another Political Party; or d) they violate the Articles of Association and Bylaws."

The provisions for dismissing political party members that have been regulated in the Political Party Law have implications for the status of political party members who are currently serving as members of the DPR/DPRD. This is stated in Article 16 paragraph (3) of the Political Party Law which states that: "In the case of a member of a Political Party who is dismissed as a member of a people's representative institution, dismissal from membership of the Political Party is followed by dismissal from membership in the people's representative institution in accordance with statutory regulations."

Interim suspension by a political party is also known as recall, which is the right of a political party to recall its members who have been elected through the list of candidates it has submitted.[9] In line with Harun Al Rasyid's opinion, long before

[8] Hereinafter referred to as the Political Parties Law.
[9] Harun Al Rasyid in "Constitutional Court Decision No. 008/PUU-IV/2006 concerning the Testing of Article 85 paragraph (1) letter c of Law Number 22 of 2003 concerning the Composition

Indonesia entered the reform era, Muhammad Hatta stated that "the inviolable right to recall of political parties is only known in communist countries, with the view that the party is everything and as if it were the sovereign party."[10] The regulation on political party recall has actually experienced dynamics from time to time. The regulation on political party recall has existed since the reign of Soekarno, but was once lost from the legislation at the beginning of the reform era, namely with Law Number 2 of 1999 concerning Political Parties and Law Number 4 of 1999 concerning the Composition and Position of the People's Consultative Assembly, the People's Representative Council, and the Regional People's Representative Council.

The last case that attracted attention was the dismissal of Tia Rahmania as a member of the political parties, which then resulted in Tia Rahmania not being inaugurated as a member of the DPR even though she received the highest number of votes (37,359 votes) in the Banten I Electoral District.[11] This is the KPU through KPU Decree Number 1368 of 2024 stating that Tia Rahmania no longer meets the requirements as a member of the DPR. The dismissal of Tia Rahmania by this political party is one of the realities of the dominance of political parties, even being able to defeat tens of thousands of people's votes who have chosen their "representatives" to become members of the DPR. And there are many more examples of the dismissal of other DPR and DPRD members that are quite controversial.[12] The reality is interesting, not only from a theoretical and normative level, but also from the practical side that occurs. This further strengthens the problematic of the political party's recall rights.

The existence of phenomena and gaps between reality and ideality regarding the implementation of democracy through general elections with the existence of political party recall rights instruments that have been described in the background, then there are two focus problems that the author will study, namely first, why can political party recall rights instruments cause degeneration of the popular sovereignty system? Second, how are the efforts to protect legislative members' legal rights against political party recall rights instruments?

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and Position of the MPR, DPR, DPD and DPRD and Article 12 letter b of Law Number 31 of 2002 concerning Political Parties against the 1945 Constitution."

[10] In Yusril Ihza Mahendra, *Dinamika Tatanegara Indonesia: Kompilasi Aktual Masalah Konstitusi, DPR dan Sistem Kepartaian*, (Jakarta: Gema Insani Press, 1996), p. 171.

[11] https://nasional.kompas.com/read/2024/09/29/05592141/kisah-pemecatan-tia-rahmania-ketika-integritas-menghadapi-intrik?page=all , accessed 4 November 2024.

[12] One of them is the recall carried out against Fahri Hamzah on the grounds that he had committed deviations from the Political Party's Articles of Association and Bylaws. http://pks.id/content/penjelasan-pks-tentang-pelanggaran-disiplin-partai-yang-dilakukan-saudara-fahri-hamzah

II. METHOD RESEARCH

This research is a normative legal research, namely examining various laws and regulations used as the basis for legal provisions to analyze the recall rights of political parties in the popular sovereignty system. The legal research model used is a comprehensive and analytical study of primary legal materials and secondary legal materials. Considering that this research is a normative legal research, the approach uses a statute approach and a conceptual approach. The data is analyzed qualitatively by describing the data generated from the research into a systematic explanation so that a clear picture of the problem being studied can be obtained, the results of the data analysis are concluded deductively.

III. DISCUSSION

A. Degeneration of Popular Sovereignty by Political Party Recall Rights

The realization of popular sovereignty is carried out through direct general elections which are a means for the people to elect their representatives. Alfred de Grazia stated that representation is interpreted as a relationship between two parties, namely the representative and the represented, where the representative holds the authority to carry out various actions related to the agreement made with the represented.[13] The people's voice in the general election mechanism is an important agenda in the realization of popular sovereignty. This is because the people directly choose who the representatives are entrusted to carry out the people's mandate. The existence of regulations regarding recall by political parties has caused a polemic in the state administration process. Here are some reasons why this recall right instrument can be degenerative of popular sovereignty.

1) General Election System

   The general election system adopted will influence the essence of people's representation.[14] Article 168 paragraph (2) of Law No. 7 of 2017 concerning general elections, as last amended by Law No. 7 of 2023, states that "Elections to elect members of the DPR, Provincial DPRD, and Regency/City DPRD are implemented with an open proportional system." The open proportional system first took place during the 2009 general election. This began with the Constitutional Court Decision Number 22-24/PUU-VI/2008 which changed the election system to an open proportional system with the application of the most votes. Based on the Constitutional Court Decision, the placement of ballot numbers is considered a form of political party oligarchy that negates the will of the people in determining their representatives.

   Political parties should not be given the authority to dismiss their members in the DPR, considering that elected DPR members are a representation of the

[13] In Arbi Sanit, *Perwakilan Politik di Indonesia*, (Jakarta: CV. Rajawali, 1985), p. 1.

[14] Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945,* (Yogyakarta: FH UII Press, 2005), p.44.

majority of the people who elected them. The large number of people's votes indicates the high political legitimacy[15] obtained by legislative candidates, conversely, the low number of votes also indicates the low political legitimacy of legislative candidates.[16] In a modern democratic system, the legality and legitimacy of government are very important factors.[17]

Regarding this election system, it can be seen that the more the election system provides more and wider space for the people to determine their own choices, the closer the system will be to the essence of popular sovereignty. The more the system narrows the space for the people to determine their choices, the further the system will be from the essence of sovereignty contained in the 1945 Constitution.[18] This is in accordance with Valina Singka Subekti's opinion that the election system is political engineering, a political engineering tool, so the choice of an election system is related to the final goal to be achieved.[19] The dynamics of the recall rights when linked to the election system adopted in Indonesia are illustrated in the table below.

Table 1. General Election System and Political Party Recall Instruments

Period	General Election System	Recall Instrument
the new order	Proportional to the Register System	Yes. Recall is used as an institution to silence critical and vocal council members, especially those who are against the government. This is motivated by the government's great authority over political parties, and makes Recall a 'tool' to gain power.
1999 Reformation	Proportional to the Closed List System	There is none. Recall is not regulated by law because it balances the euphoria of reform at that time, to place the holder of sovereignty in the people, no longer controlled by political parties and the authoritarian government during the New Order.
2004 Election	Proportional to the Open List System	Yes. After the amendment to the 1945 Constitution which gave political parties a stronger position, and there were provisions for the dismissal of council members regulated by law in the constitution. This was the reason for the

[15]Based on the understanding of legitimacy, the understanding of power, authority, and legitimacy can be distinguished. If power is interpreted as the ability to use sources that influence the political process, while authority is the moral right to use sources that make and implement political decisions. Legitimacy is the acceptance and recognition of the community towards these moral rights. Quoted from Ramlan Surbakti, *Memahami Ilmu Politik*, (Jakarta: PT Grasindo, 2000), p. 118

[16]See Constitutional Court Decision No. 22-24/PUU-VI/2008 concerning the judicial review of Law Number 10 of 2008.

[17]Jimly Asshiddiqie, "Partai Politik dan Pemilihan Umum sebagai Instrumen Demokrasi", *Jurnal Konstitusi* Vol. 3 (4), 2006, p. 13

[18]Khairul Fahmi, *Pemilihan Umum dan Kedaulatan Rakyat*, (Jakarta: PT RajaGrafindo, 2011), p. 6

[19]*Ibid*., p. 215

		lawmakers to re-include Recall in the law. With the reason to avoid non-faction members. However, the implementation of Recall remains a regulation to recall council members who do not comply with the AD/ART of the political party that oversees it.
Election 2009 to Present	Proportional to the Most Votes	Yes. The Recall authority still exists, even though the election of council members is based on the most votes and not based on the sequence number determined by the political party. Recall tends to be a tool to control members of political parties in parliament. In accordance with the election system which is the most people's vote, the dismissal must also come from the people, not the political party.

Source: Processed Data.

In accordance with the principle of popular sovereignty where the people are sovereign, then all aspects of the implementation of the general election itself must also be returned to the people to determine it. The system adopted will have an influence, both regarding the general election system and the party system, greatly influencing the essence of people's representation.[20] The general election system reflects the manifestation of popular sovereignty.[21] The choice of a particular general election system will also be a measure of the extent to which state administrators are consistent with the principle of popular sovereignty in the 1945 Constitution.[22]

The legal policy of political party recall rights leads to recalls being used as an instrument by political party leaders to control their members in parliament so that they can always follow the direction of their party's policies.[23] The existence of the political party recall right instrument is not in line with the general election system used. The political party recall right can be a space of authority for political parties to negate the results of the people's choice as the holder of sovereignty for the benefit of the political party.

2) Rights and Legal Status

The dismissal of political party members who are currently holding positions as members of the DPR or DPRD, due to violations of the AD/ART is a reason that according to the author is difficult to objectively assess, party leaders can subjectively assess that their members have violated the AD/ART. There needs to be a dichotomy of the position of carrying out functions as "legislative

[20]Jimly Assiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945,* (Yogyakarta: FH UII Press, 2005), p. 44.

[21] Malicia Evendia, "Implikasi Hak Recall Partai Politik terhadap Sistem Kedaulatan Rakyat", *Fiat Justitia: Jurnal Ilmu Hukum* 6 (3), 2015.

[22] Khairul Fahmi, Op.Cit., p. 6.

[23] The provisions on political parties' recall rights tend to show a conservative or orthodox legal character. Malicia Evendia, et al, "The Legal Politics of Recall Right of Political Parties Relevance with the System of Popular Sovereignty in Dynamics of the Constitution of Indonesia", *Pattimura Law Jounal*, 5 (1), 2020, p.20-35.

members" with those as "political party members". Although, it is not possible for every legislative member to be without a political party, it also does not mean that all legislative members are under the command of the political party.

This is especially true because the constitutional amendment has strengthened the sovereignty of the people, where the sovereignty of the people is no longer carried out by the MPR, but is implemented according to the Constitution.[24] The opinion of judges Maruarar Siahaan and Jimly Asshiddiqie in the dissenting opinion of the Constitutional Court Decision No. 008/PUU-IV/2006, also from the perspective of the theory of representation, then members of the legislature after being elected to public office, then they act in the interests of the nation. Representatives of the people in this case are representatives of the people, not political parties. So it is not right if members of the legislature who have different opinions with party policies can be dismissed as representatives of the people.

The immunity rights held by members of the DPR, in Article 224 paragraph (3) of the MD3 Law, stipulates that "DPR members cannot be replaced in the interim period due to statements, questions, and/or opinions expressed either in DPR meetings or outside DPR meetings related to the functions, authority and duties of the DPR." This provision becomes pseudo if political parties consider that their members who are carrying out their functions, authority and duties as DPR members are seen as contradicting the AD/ART. This is certainly contradictory, because interim replacement is impossible without an interim dismissal phase. Whereas in interim dismissal, it provides the door and legitimacy for political parties to dismiss their members.

In fact, whether or not someone becomes a member of the DPR/DPRD is not solely due to political parties, in the sense that in this case one of the functions of political parties as "political recruitment" has been running, but the final determinant is the people. Therefore, things that can "obscure" the implementation of the functions, authorities and duties of DPR members should be eliminated or designed in such a way that they do not become a tool for political parties to control DPR/DPRD members.

The use of recall rights by political parties against their members in parliament tends to make the political party in question dominant over its party members, so that members of the council prioritize their party's interests rather than conveying the aspirations of the people (constituents). Denny Indrayana stated that if the party carries out the recall, then loyalty is built to the party and not to the people.[25] Arbi Sanit also revealed that from the perspective of political science and government, it shows the irrelevance of the recall rights to the

[24] Article 1 paragraph (3) of the 1945 Constitution.
[25] Constitutional Court Decision No. 008/PUU-IV/2006.. Op.Cit.

democratic process that is carried out in a reformative manner.[26] In fact, according to Charles Simabura, the popular vote mechanism of the people should not only be involved in the filling process but also in the dismissal process.[27]

In addition to the case of the dismissal of members of the DPR and DPRD, another case that is an indication of the increasing loyalty to the leaders of political parties compared to the people is the resignation of elected legislative candidates (who received the most votes), so that other members of political parties below them can move up. For example, the most recent incident was Romy Soekarno, who was able to successfully pass to become a member of the DPR RI after two legislative candidates from the same party, namely Sri Rahayu and Arteria Dahlan, resigned.[28]

This is similar to what was once put forward by Robert Michels, who specifically rejected the assumption regarding representation by leaders (representative leadership), because most mass organizational policies do not reflect the will and interests of the masses, but reflect the will and interests of the leaders.[29] Organizations, including political party organizations, sometimes act loudly for and on behalf of the people's interests, but in reality in the field they actually fight for the interests of their own administrators.[30] Therefore, this recall right instrument becomes a "weapon" for party leaders that can shift the essence of popular sovereignty to political party sovereignty.

B. Legal Protection for Dismissal of Legislative Members Against Political Party Recall Rights Instruments

Legal protection is a guarantee provided by law for human rights that are threatened by authorities or other parties, in order to ensure the upholding of the law and the protection of citizens' rights.[31] According to Philipus M. Hadjon, with “government action” as the central point, (associated with legal protection for the people), two types of legal protection are distinguished, namely: preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent disputes

[26] *Ibid.*

[27] Charles Simabura, “Akuntabilitas Rekrutmen Calon Anggota Sebagai Wujud Kedaulatan Rakyat”, *Jurnal Konstitusi*, Vol. 2, No. 1 (Juni 2009): 21-22. As quoted in Ni’matul Huda & M. Imam Nase, *Penataan Demokrasi dan Pemilu di Indonesia Pasca Reformasi*, (Jakarta: Penerbit Kencana, 2017), p. 195.

[28] https://news.detik.com/berita/d-7564751/arteria-mundur-caleg-terpilih-saya-kerja-untuk-ibu-ketum-dan-keluarga-besar accessed 4 November 2024.

[29] Seymour Martin Lipset, *Pengantar* Untuk Edisi Bahasa Inggris, in Robert Michels, *Partai Politik Kecenderungan Oligharki dalam Birokrasi*, (Jakarata: Rajawali, 1984). p. Xxvi.

[30] Jimly Assiddiqie, *Kemerdekaan Berserikat Pembubaran Partai Politik dan Mahkamah Konstitusi*, (Jakarta: Konstitusi Press, 2006), p. 68

[31] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia,* (Surabaya: PT Bina Ilmu, 1987)

from occurring, while conversely repressive legal protection aims to resolve disputes.[32]

Muchsin said that preventive legal protection is an effort taken to prevent violations of individual rights by providing preventive regulations and providing an opportunity to file objections before a decision is taken.[33] Meanwhile, repressive legal protection is a legal action taken to provide protection after someone's rights have been violated. This action includes sanctions and restoration of individual rights through the courts or other legal mechanisms.[34]

As for repressive protection, the provisions of Article 32 and 33 of the Political Party Law contain repressive protection space in the event of a political party dispute, including if there is a unilateral dismissal of a political party member by the party leader. Article 32 states that:

(1) Political Party disputes are resolved through deliberation and consensus.
(2) In the event that deliberation and consensus as referred to in paragraph (1) is not achieved, the resolution of the Political Party dispute shall be through the courts or outside the courts.
(3) Settlement of disputes outside the courts as referred to in paragraph (2) may be carried out through reconciliation, mediation, or arbitration of the Political Party, the mechanism for which is regulated in the Articles of Association and Bylaws.

Furthermore, in Article 33, that:

(1) In the event that a dispute resolution as referred to in Article 32 is not achieved, the dispute resolution shall be carried out through the district court.
(2) The decision of the district court is the first and final decision, and may only be appealed to the Supreme Court.
(3) The case as referred to in paragraph (1) shall be settled by the district court no later than 60 (sixty) days since the lawsuit is registered at the district court clerk's office and by the Supreme Court no later than 30 (thirty) days since the cassation memorandum is registered at the Supreme Court clerk's office.

This regulation is basically a path that can be taken in the event of a dispute and disagreement. In the provisions of Article 241 paragraph (1) of the MD3 Law, it is stated that "in the event that a member of a political party is dismissed by his/her political party as referred to in Article 239 paragraph (2) letter d and the person

[32] *Ibid.*
[33] Muchsin, *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*, (Surakarta: Universitas Sebelas Maret, 2003), p. 22.
[34] *Ibid.*

concerned files an objection through the court, the dismissal is valid after there is a court decision that has obtained permanent legal force." In addition, repressive protection efforts that can be carried out are by submitting a judicial review to the Constitutional Court (MK) against the provisions of the norms governing the recall rights. As for historical records, the history of constitutional submissions against the recall rights political parties to the MK is contained in the table below.

Table 2. Recapitulation of Constitutional Court Decisions in Testing the Provisions on the Recall Rights

Case Number	Testing Object (UU)	Verdict
008/PUU-IV/2006	Law No. 22 of 2003 and Law No. 31 of 2002	Reject the applicant's application in its entirety
38/PUU-VIII/2010	Law No. 27 of 2009 and Law No. 2 of 2008	Reject the applicant's application in its entirety
72/PUU-X/2012	UU No. 2 of 2008 as amended by Law no. 2 of 2011, as well as Law No. 27 of 2009	Reject the applicant's application in its entirety

Source: MKRI.

In case number 008/PUU-IV/2006, one of the legal considerations of the Constitutional Court was:

> "Considering that in deciding the a quo case, the Court bases itself on the provisions contained in the 1945 Constitution as a basis for conducting a judicial review of the law, which is one of its authorities. In its position as a judicial institution that upholds the constitution, the Court can interpret the provisions contained in the constitution if necessary to be able to provide a concrete decision on the judicial review of the law, which is very necessary when what is written in the constitution turns out to require interpretation or what is contained in the constitution gives rise to various interpretations (multi-interpretation). The Court is not in a position to include things that are clearly not chosen by the legislators as a system or part of the constitutional system that is determined, because this is the full authority of the legislators. The existence of weaknesses in the system determined or chosen by the constitution in the regulation of state administration does not give the Court the right or authority to make changes through its decision because such matters are clearly the authority of the legislators."

The consideration reflects that because the dismissal of DPR members is not expressly stated in the 1945 Constitution, the Constitutional Court cannot change the will of the makers of the 1945 Constitution who delegated it through law. The decision of the case is the first in a constitutional review of the provisions on the recall rights of political parties. In this decision, out of 9 (nine) Constitutional Court

judges, there are 4 (four) judges who *Dissenting Opinion*[35] (different opinions), namely Prof. Abdul Mukthie Fadjar, S.H., M.S., Maruarar Siahaan, S.H., Prof. Jimly Asshiddiqie, S.H., and Prof. Dr. H. M. Laica Marzuki, S.H. The following is a summary of the Dissenting Opinion on the petition for the case.

Table 3. Dissenting Opinion in Constitutional Court Decision Number 008/PUU-IV/2006

Judge's name	Dissenting Opinion Conclusion
Prof. Abdul Mukthie Fadjar, S.H., M.S.	In order to build a healthy democratic system and party system, the recall rights by political parties against their members who sit in representative institutions for subjective reasons as stated in Article 85 paragraph (1) letter c of the Susduk Law in conjunction with Article 12 letter b of the Political Parties Law should be abolished, which means that the Applicant's request is sufficiently justified to be granted.
Maruarar Siahaan, S.H., and Prof. Jimly Asshiddiqie, S.H.	Article 12 letter b of Law Number 31 of 2002 concerning Political Parties and Article 85 paragraph (1) letter c of Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly, People's Representative Council, Regional Representative Council and Regional People's Representative Council, in our opinion, are in conflict with the 1945 Constitution of the Republic of Indonesia, and the Court should declare them to have no legally binding force.
Prof. Dr. H. M. Laica Marzuki, S.H.	It is reasonable to grant the petition for judicial review requested by the Applicant, in order to declare that Article 85 paragraph (1) letter c of Law Number 22 of 2003 concerning the Structure of the MPR, DPR, DPD and DPRD is in conflict with Article 28C paragraph (2), Article 28D paragraph (1) and (2) of the 1945 Constitution, and to declare it not legally binding.

Source: MKRI.

Furthermore, in case 38/PUU-VIII/2010, it became a trace of legal efforts that had been taken again in the constitutional review of the provisions on the recall rights of political parties. One of the applicant's arguments was the existence of the Constitutional Court Decision Number 22-24/PUU-VI/2008 which had changed the election system to an open proportional system with the application of the most votes which placed sovereignty in the hands of the people. However, in the considerations of the Constitutional Court, among others, it stated that:

> "Because the legal position in question in the petition is clear and in the a quo case the Constitutional Court has already decided in Decision Number 008/PUU-IV/2006, dated 28 September 2006 and has become jurisprudence, then in examining the Petitioner's petition, the Court considers it unnecessary to hear the statement of the People's Representative Council and the President's statement, so the Court immediately decides the a quo case."

[35] *Dissenting Opinion is an opinion expressed by a judge that differs from the majority opinion of the judges in a court decision. This opinion allows the judge to maintain his legal view even though he is outvoted.* Jonaedi Efendi & Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, (Jakarta: Prenadamedia Group, 2016), p. 101.

Where this case is still decided, even though the main substance of the a quo application has been decided in the previous case (Decision Number 008/PUU-IV/2006, dated September 28, 2006) so that the a quo application is ne bis in idem and the application should not be accepted, but because the main substance of the a quo application is contained in a different Law from the Law that has been decided previously, the a quo application must be declared rejected. The point of the decision that can be drawn is that the jurisprudence on Decision Number 008/PUU-IV/2006 is part of the reason the Constitutional Court rejected the constitutional application.

In simple terms, based on these decisions, the judicial review efforts against the provisions on the recall rights of political parties are very unlikely to be granted, because, first, the 1945 Constitution in the provisions of Article 22B mandates that it be regulated in law so that the Constitutional Court cannot change the will of the constitution makers, and second, the jurisprudence in Decision Number 008/PUU-IV/2006 states that it is rejected.

The constitution plays an important role in the administration of the state, including strengthening the system of popular sovereignty. Regarding the role of the constitution in the state, C.F. Strong likens the constitution to the human body and the state and political bodies as organs of the body. The organs of the body will work harmoniously if the body is healthy and vice versa. The state or political bodies will work according to the functions that have been set out in the constitution. Adnan Buyung Nasution stated that “the constitution is the highest rule of the game in a country which must be obeyed by both those who hold power in the country and by every citizen.”[36]

The constitutional basis for general elections in Article 22E paragraph (2) of the 1945 Constitution stipulates that "general elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President and Regional People's Representative Council." This provision means that the general election mechanism as a space for direct involvement of the people in determining the government that will run is an important process in the crystallization of democracy. The existence of the recall right instrument carried out by political parties is not in line with the spirit of the people's contribution in determining representatives elected through general elections. If we examine the material content of the constitution regarding the election and dismissal of positions elected in the general election, it can be seen in the following table:

[36] Muhamad Rakhmat, *Konstitusi dan Kelembagaan Negara*, (Bandung: LoGoz Publishing, 2014), p. 15-16.

Table 4. Comparison of Dismissals and General Election Participants Based on the Constitution

Position	Participation	Termination
DPR	Article 22 E paragraph (3), Political Parties.	Article 22B, delegates norms to be regulated in laws.
DPRD	Article 22 E paragraph (3), Political Parties.	The regulatory norms are regulated vaguely in Article 18 paragraph (7) which delegates them to be regulated by law.
President & Vice President	Article 6A paragraph (2), proposed by political parties or a coalition of political parties participating in the general election.	Articles 7A and 7B contain provisions regarding the substance of the reasons for dismissal and provisions regarding the (formal) procedures for dismissal.
DPD	Article 22E paragraph (4), Individual.	Article 22D paragraph (4), delegates norms to be regulated in laws.

Source: 1945 Constitution.

Based on the table, it can be seen that only the positions of president and vice president have a certain constitutional basis that regulates the termination of office from the results of general elections. The position of DPD which comes from individuals, even though they are representatives of each province, further provisions in the law do not provide space for a "recall" mechanism. Dismissal can be carried out for objective reasons through the applicable legal process.

Then the juxtaposition of the provisions on the positions of regional head & deputy regional head, although the constitution does not explicitly stipulate that it must go through a general election mechanism. However, the election of regional heads and deputy regional heads as regulated in Law No. 1 of 2015 as last amended by Law No. 6 of 2020, is the basis and policy choice taken that the election of regional heads & deputy regional heads is carried out through a general election process. The participants are individuals or can also be proposed by political parties or a coalition of political parties. As for their dismissal, as regulated in Article 78 of Law Number 23 of 2014 concerning Regional Government, there is no room for political parties to be able to dismiss them through the recall rights mechanism.

Thus, political parties are basically not only involved in the process of electing members of the DPR and DPRD, but also play a role in electing the President & Vice President as well as the Regional Head & Deputy Regional Head. This also does not rule out the possibility that the President & Vice President as well as the Regional Head & Deputy Regional Head are members of a particular political party. However, the recall right instrument applies only to members of the DPR and DPRD, not to other positions affiliated as members of a political party. This condition becomes inconsistent if the political party recall right instrument is applied to members of the DPR and DPRD. The same philosophy should also be applied to members of the

DPR and DPRD, especially members of the DPR who have a central position in the formation of laws. The institution of the DPR as a manifestation of the people can be seen as a manifestation of a political party if the reason for dismissing them as members of the DPR can be done by a political party.

Preventive legal protection is needed in the dismissal of legislative members against the instrument of recall rights. This is a legal means so that political parties cannot easily use the instrument of recall rights with full power, and this is also to eliminate the concerns of legislative members in carrying out their functions as representatives of the people, not representatives of political parties.

The constitutionalization of the dismissal of DPR members is a discourse that needs to be considered for inclusion in the constitutional amendment agenda. This is inseparable from the fact that the constitution is the highest source of law.[37] The DPR as an institution, whether it is healthy or not also depends on the people in it. If there is a legitimate recall right instrument in the law, it can become a "bugbear" for the "people's representation" process. Moreover, to the point of normalizing "party officials", this can harm the popular sovereignty system. The rejection by the Constitutional Court of the judicial review efforts of political party recall rights as described above, adds a strong reason that there needs to be a loading of norms through the constitution. According to the author, this is fundamental material for the sustainability of a healthy popular sovereignty system.

IV. CONCLUSION

Based on the analysis and discussion that has been described, it can be concluded that: First, the existence of the political party recall right instrument in the law becomes the legitimacy of political parties in controlling members of the DPR/DPRD, where the people determine their representatives through the general election mechanism, but political parties can replace the results of the general election by using the recall right instrument. This causes degeneration with the shift in the essence of popular sovereignty to political party sovereignty. Second, constitutionalization as a form of preventive legal protection for members of the DPR and DPRD from political party recall actions becomes a legal alternative in strengthening popular sovereignty so that it does not become the sovereign territory of political parties. This is part of democratization in facing the reality that leads to the dominance of political parties that can negate the voice of the people.

[37] Malicia Evendia, Ahmad Saleh, & Ade Arif Firmansyah, "Reflection of Political Law on Job Creation in Realizing Environmental Justice", *Pranata Hukum* Volume 19 No.2 July 2024, p. 204.

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