



Optimizing the role of political party courts in resolving internal political party disputes

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Abstract

The purpose of this study is to provide suggestions for new legal concepts, to optimize the role of the Political Party Court, using normative juridical law research methods and approaches to laws, cases, and comparative law approaches. The mechanism for resolving internal disputes within political parties is regulated in Article 32 of Law of the Republic of Indonesia Number 2 of 2011 concerning Amendments to Law of the Republic of Indonesia Number 2 of 2008 about Political Parties (Political Parties Law), which states that it can be done through the Court of Political Parties. Furthermore, Article 33 of the UUPP can submit the settlement mechanism through a lawsuit to the District Court and the Supreme Court. The legal fact is that from several internal political party dispute cases, the settlement process is not only done through these two methods. However, someone suddenly created a rival Extraordinary Congress, seeking legal tendencies at the Ministry of Law and Human Rights of the Republic of Indonesia to file a lawsuit with the State Administrative Court. So it is necessary to have a new legal concept to optimize the role of the Political Party Court and a one-door mechanism for resolving internal disputes of political parties.

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1. Introduction

One of the essential components in the administration of the state administration system in Indonesia is a political party. An important role is to prepare the nation's best generations through a cadre process so they can later fill important positions in the structural wheel of government, both in the executive and legislative fields. Not only do they play a role in terms of cadre, but political parties have a very central status and role in the democratic system. Political parties are the strategic link between the government process and citizens' wants and needs.

The form of public participation in modern institutions in the democratic era is political parties because, through this mechanism, consolidation, distribution, relocation, and all aspirations, values, and what civil society wants can be channeled through their representatives in the government structure, both executive and legislative. In legal fact, it can be seen that the legal position of political parties is in two alliances, namely, established in the form of private law and has a function in the realm of public law. (Wington, 1999)

The combination of public and private aspects illustrates that political parties are democratic institutions that uphold egalitarian principles and freedom of association for every citizen to gather and realize the ideals and values for the common interest, which is carried out using general elections. (Porto, 1999)

The Political Party Law states that political parties are organizations that have different characteristics from other organizations, are national, and are given a forum to fight for the political interests of members, society, nation, and state, which are included in the Articles of Association and Bylaws (AD ART) every year. Political parties. The right to run AD ART is what then becomes a reference in running the party's structural program wheel. (Asshiddiqie, 2006)

Fighting for the rights of citizens to carry out the mandate that has been stated in the AD ART will not be achieved if the political party has internal problems of the party itself. Like the unilateral dismissal of cadres, the dualism of the party carried out through several counter Extraordinary Congresses is the root of the problem and the failure to realize the ideals of the political parties themselves. In addition to being the root of the problem that impacts the less than optimal role of political parties in a democratic system, it is also a fatal problem, namely, the loss of citizens' sense of trust in these political parties.

Disputes within political parties are regulated in Article 32 of the Law of the Republic of Indonesia Number 2 of 2011 concerning Amendments to the Law of the Republic of Indonesia Number 2 of 2008 about Political Parties (Political Parties Law), which mentions several internal dispute resolution mechanisms that must be passed if there is an internal dispute within the party. The party's AD must complete the settlement, and ART and the payment must be resolved through the Political Party Court or other designations established by the party itself.

The authority granted by the state through the article is final and binding internally in the case of disputes related to management. The settlement mechanism must be completed within a maximum period of 60 days. After the decision is taken on the case, the administration must report it to the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham RI), as the state agency responsible for the legal actions that have been carried out.

Article 33 Political Parties Law provides an opportunity; if the dispute is not reached or is not agreed upon by both parties, then both parties can file a lawsuit to the district court and proceed through a cassation at the Supreme Court. This mechanism must be passed when there is an internal dispute in a political party.

The mechanism for resolving political party disputes outside the Political Party Court makes the dignity and position of the Political Party Court within the party very weak. It seems to be ignored by party cadres or administrators who want to resolve the disputes they are experiencing. They prefer to settle outside the Political Party Court through the District Court and the Supreme Court.

Several cases of political party disputes in the last decade show that the Political Party Court is not the desired mechanism by party cadres in dispute. In 2014 the Golkar Party (Golkar) conflict that occurred between Agung Laksono's camp and Abu Rizal Bakrie's camp led to two National Conferences (MUNAS), Agung Laksono's camp held a National Conference in Ancol and Abu Rizal Bakrie's camp had a National Conference in Bali, which then continued with the ratification of the Abu Rizal Bakrie camp by the Kemenkumham RI, then sued in the Administrative Court of the decision and granted the lawsuit of Agung Laksono's base and ended through a mutual reconciliation mediated by Golkar Party senior Jusuf Kalla is one example that even though it has gone through the mechanism of the Political Party Court, then parties are still not satisfied and want to continue the dispute to the state judicial loophole, which is already regulated through Article 33 of the Political Parties Law.

The most recent case in 2021 was a cadre of the Democratic Party suddenly holding an Extraordinary Congress (KLB) by appointing Moeldoko as general chairman, even though legally, the management of the Democratic Party was recognized by the Kemenkumham RI as Agus Harimurti Yudhoyono's stronghold. Surprisingly, the Political Party Court in the legitimate Democratic Party has not held any trial regarding the internal problems he is experiencing. Still, suddenly a rival Extraordinary Congress appears, which prefers to create a new KLB rather than resolve its internal issues through the Political Party Court.

There are two mechanisms for resolving internal political party disputes as regulated in the Political Party Law, namely; firstly through the Political Party Court without involving other state organs, and secondly through the District Court and the Supreme Court, making the function of the Political Party Court often neglected and tended to be underestimated by cadres who have a dispute preferring to resolve it outside the Political Party Court.

Based on the scientific work written by Firdaus, which the Constitutional Journal published, it was found that externally the decision of the Political Party Court was not final and binding, both to the Government and to the court. The government, through the ministry in charge of ratifying the management of political parties, can implement the decisions of the Political Party Court by approving or not authorizing the administrators won by the Party Court. Likewise, the court may or may not accept to examine, hear and decide on the application of the parties who are not satisfied with the decision of the Political Party Court; therefore, this paper will discuss the optimization of the Political Party Court in resolving internal party problems and with a one-door mechanism. The formulation of the situation in this study is how the legal solution to optimizing the role of the Political Party Court, which is often ignored by cadres and administrators of political parties in dispute.

2. Methods

The research method used in this research is normative juridical, through the use of primary legal materials, namely laws and regulations relating to the Political Party Court, and secondary legal materials, namely books and journals related to this research. The approach used in this research is the law approach, the comparative approach, and the case approach. (Marzuki, 2017)

3. Results and Discussion

3.1. Political party dispute resolution mechanism

The Law of Political Parties, maintaining the state's integrity, realizing the nation's ideals, and reviving and implementing Pancasila values aimed at the welfare of the people are the objectives of political parties stated in the Act. The dreams that will be achieved in the goals of political parties will be realized if political parties truly become people's aspirations for the progress and welfare of the nation.

The critical role of political parties as a forum for growing freedom of association, giving, and togetherness is something the state must provide to its people. Freedom of association and in law (equality before the law) guaranteed by the Constitution are the main requirements to create a sense of togetherness in the state. Political parties are bridges for people who want to express their wishes and opinions to improve their country's progress. If political parties can become a forum for realizing the ideals of the community, then togetherness will be established between the people's wishes and the implementation of state policies. Togetherness can only be achieved if political parties realize the people's aspirations. (Soedarno, 2005)

The objective of the political party will not be achieved if there are internal problems within the political party, cadres, cadres, and party administrators. Internal issues that end up in legal disputes should not happen and should be resolved immediately so that the aspirations of the people and the visions and missions of the political parties can be achieved instantly.

Based on Article 32 of the Law of Political Parties, dispute resolution can be carried out through internal political parties by optimizing the role of the Political Party Court or other designations as an intermediary that will determine party

decisions binding within the body. The Constitutional Court of Political Parties must be legally reported and recorded at the RI Ministry of Law and Human Rights. The estimated time given by Article 32 of the Political Party Law to resolve the dispute is 60 days. The decision of the Political Party Court on the legal disputes it handles is final and internally binding.

This article shows the Political Party Court's dominant role in resolving internal party meetings. Likewise, regarding the position of membership of a Political Party whose validity is not recognized within the party's interior but is also identified and must be reported to the Indonesian Ministry of Law and Human Rights. If we go back to the origins of the founding of political parties, it must have started with a common goal to fight for the rights of citizens who were united in one voice and finally united to unite. This means that if it starts from a unity of the same ideals, why when something internal happens, it must involve external organs to make it happen. (Mochtar, 2019)

Legally, the mechanism for resolving political party disputes is carried out by the Political Party Court. According to 33 Political Party Laws, it can be resolved through the District Court and the Supreme Court of the Republic of Indonesia with the provisions that have been regulated. When the settlement process is not reached through the Political Party Court, the case can be brought to the District Court. Since the lawsuit was filed, the estimated time for the District Court to resolve the dispute is 60 days. If they are still unsatisfied with the District Court's decision, the plaintiff can appeal to the Supreme Court. The estimated time for cases that have been in the Supreme Court of the Republic of Indonesia is 30 days from the memory of the cassation. (Suwito & Patra, 2016)

The second mechanism is more than the participation of judicial power through the District Court and the Supreme Court of the Republic of

Indonesia to enter into internal political party meetings by suspending the role of the Political Party Court. The decision of the Political Party Court is only an initial requirement so that this matter can be brought to court outside the party. This means that it is legally recognized as an internal judicial institution through the Political Party Court; it turns out that other options for accepting internal party receipts are still provided by the Political Party Law, namely through the District Court and the Supreme Court.

A mechanism for resolving political party disputes as regulated in Articles 32 and 33 of the Political Party Law shows that the role of the Political Party Court is not dominant in its regulation. This can be seen even though the membership of the Political Party Court must be registered at the RI Ministry of Law and Human Rights, as well as the Decision of the Political Party Court, which is final and internally binding; this is not the end in its settlement. The role of the Political Court in Political Party Law is not fundamental within the party body, considering that Political Party Law provides legal loopholes through other judicial institutions to resolve internal political party disputes.

3.2. The role of political party courts in cases of political party disputes

Two cases of political party disputes that will be used for this research are the case of the internal division of the Golkar Party that occurred in 2014 and the case of the internal division of the Democratic Party that occurred in 2021. The first case is the split between the two warring camps, Agung Laksono and the Supreme Laksono camp. Abu Rizal Bakrie, both of them have first gone through the dispute resolution process through the Political Party Court. However, there was dissatisfaction from one party, namely Agung Laksono's camp, who brought this dispute to the Indonesian

Ministry of Law and Human Rights to ask for approval from the management.

It did not stop there; the Abu Rizal Bakrie camp filed a lawsuit in two ways, the first was through the District Court, and the second was against the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia to the State Administrative Court. The result is that PTUN Jakarta No. 62/G/2015/PTUN cancels the ratification of the management of the Agung Laksono camp, which has been ratified through the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia. The chase ended when one of Jusuf Kalla's seniors mediated between the camps. After the meeting of the two parties, an agreement was agreed upon to make peace and hold an Extraordinary National Conference in Bali; Setya Novanto was elected as the General Chair of the Golkar Party by acclamation.

The second political party dispute occurred in the Democrat Party in 2021. Without rumors of internal conflicts within the party and no trial being held by the Democratic Party's Political Party Court, suddenly, there is a rival Extraordinary Congress (KLB) outside legitimate party management. The rival KLB had in Deli Serdang by choosing Moeldoko as the General Chair of the Democratic Party. Agus Harimurti Yudhoyono's camp responded to this incident as a legitimate stronghold and was recognized by the Indonesian Ministry of Law and Human Rights.

The response was not only a political response but also a legal response from the Agus Harimurti Yudhoyono (AHY) camp. The AHY camp sued 12 people suspected of being involved in the planning and implementation of the Deli Serdang KLB at the Jakarta District Court. As a result, the Jakarta District Court rejected the lawsuit. Furthermore, the Moeldoko camp submitted the approval of the new management to the Indonesian Ministry of Law and Human Rights. As a result, the proposal for the new administration was

rejected by the RI Ministry of Law and Human Rights, which still acknowledged that the legitimate direction was in the AHY camp. The Moeldoko camp's last fight was to sue the Indonesian Ministry of Law and Human Rights' refusal decree. The Jakarta Administrative Court has not decided until this research was completed and is still at the document proof stage.

The legal comparison that can be drawn from the two examples above is that the Golkar Party still uses legal mechanisms, especially those regulated in the Political Party Law. In the end, they choose the court outside the Political Party Court. In contrast to the Democrat Party KLB case carried out by Moeldoko's camp, without going through the process of resolving internal problems through the Political Party Court, this camp prefers to bypass the mechanism of the Political Party Court by creating new management through a rival KLB.

It should be noted that the Political Party Court is legally authorized to resolve internal party problems, which include; dismissal, dismissal, and interim replacement for members of the DPR/DPRD from the political party and giving decisions on management disputes that occur within the party's internal (Permana, 2016). Furthermore, Decrees issued by the Political Party Court and Political Parties also have legal consequences for state institutions, such as the Police and the General Election Commission (KPU).

For KPU, this decree can be used as the basis for registration requirements for candidates for President/Vice President, candidates for Governor/Mayor/Regent, and conditions for registration of candidates for legislative members either as DPR/DPRD. The decision of the Court of Political Parties does not only apply internally but also applies externally. The Decision Letter of the Political Party Court also impacts the performance of policy arrangements for the Ministry of Home Affairs, Provincial Government, and City/Regency

Governments to disburse financial aid funds to political parties. From the RI Ministry of Law and Human Rights, the Decree of the Political Party Court is used as the basis for the legitimacy of management which is legal and recognized by the state, and for the benefit of the Police is the main requirement for issuing permits for events to be held by the Political Party. (Jamaluddin, 2020)

Legally, the Political Party Court has a legal force that impacts not only internal parties but also external parties, namely government organs. Looking at the two examples of cases above, we can see that although in Political Party Law, the power of the Decisions of the Political Party Courts is final and binding internally, it cannot be used as the main organ in resolving internal party disputes.

The existence of other mechanisms provided by Political Party Law through lawsuits to the District Court and the Supreme Court of the Republic of Indonesia is considered more reliable in deciding internal Party disputes. Other settlement mechanisms can also be carried out through the RI Ministry of Law and Human Rights by asking for the approval of the management and the output if it does not agree with the Decree of the Ministry of Law and Human Rights of the Republic of Indonesia, it can be done through a lawsuit to the State Administrative Court. From this, we can see that the role of state institutions, both through the Judicial Powers and the Indonesian Ministry of Law and Human Rights, is still dominant in resolving internal political parties' internal disputes.

3.3. Legal reform to optimize the role of political party courts

In efforts to optimize a system based on law, the first step that must be done is to enforce the rules. Enforcement of the regulations starts from making written laws that provide legal certainty and can be a solution to problems in the imple-

mentation of these regulations. Law enforcement is an attempt to enforce the values as outlined in the norms contained in these regulations. Law enforcement officers should understand the rules that have been made and make them a legal spirit in their implementation. (Muladi, 2002)

The legal spirit in this study is expected to apply holistically, not only to party cadres, by-laws of political parties, party officials, and party advisory boards to structural ones in the Political Party Court. Legislative members must have a legal spirit because it is from this institution that our laws and regulations are created. Executive organs must also have a legal nature because this institution will run the wheels of government.

In actual terms, political parties are community groups that have a degree of autonomy over the state by running for public office through political parties and will later lead and control the bureaucracy and implement public policies. (Nahuddin, 2015) From this term, political parties have cadres who have the potential to have high integrity as public officials to have the capacity to control the bureaucracy of a country. But the fact is that internal disputes within the political parties still cannot be resolved themselves; they still need state institutions outside the political parties to participate in resolving internal conflicts within the political parties.

The two examples above prove that cadres and political party administrators must seek justice outside the judicial system. This is based on the first; Legally, the state does provide opportunities for dispute resolution through the Court of Political Parties, but on the other hand, the state also offers other mechanisms, namely through the District Court and the Supreme Court of the Republic of Indonesia. Second; Legally in Political Party Law, there is no mention that dispute resolution can be carried out through the RI Ministry of Law and Human Rights to the State Adminis-

trative Court. Still, in legal fact, this is done by several cadres and party administrators in dispute.

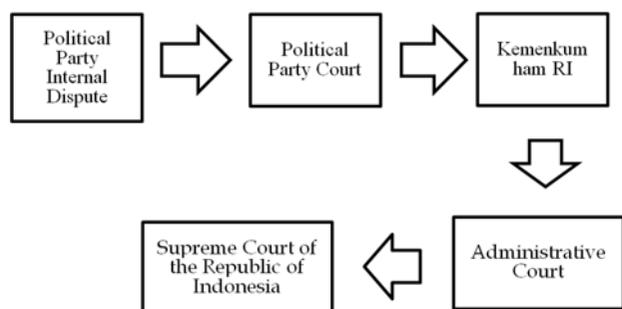
The existence of three mechanisms for resolving political party disputes has reduced the dominance of the Political Party Court. Furthermore, including the District Court and the Supreme Court of the Republic of Indonesia in the case of dissatisfaction with the Political Party Court's decision further eliminates the Party Court's role in the internal party. In Political Party Law, one institution closely related to political parties is the Indonesian Ministry of Law and Human Rights. Considering every registration of political parties and ratification of AD/ART to change of management, these three things are directly related to the RI Ministry of Law and Human Rights.

Optimizing the role of the Political Party Court can be done first by abolishing Article 33 of the Political Party Law, which provides opportunities for cadres and administrators to have cases in the District Court and the Supreme Court of the Republic of Indonesia. The legal reason for the abolition of this Article is that a political party is a national legal entity under the Indonesian Ministry of Law and Human Rights. Suppose the judiciary is inclined settlement of political party disputes. In that case, it indicates that the state has abused the power of freedom of association which is contained in the value of Human Rights (HAM), protected by the constitution, and is a mandate contained in the importance of Pancasila. (Anggriawan, 2020) This step can be done through a judicial review of the Constitutional Court of the Republic of Indonesia.

The second step is to create a new political party dispute resolution system by involving the Political Party Court and the Indonesian Ministry of Law and Human Rights at the beginning. The mechanism can be done through; every dispute must be resolved under one roof: Political Party Court. Every argument an SK has issued from the

Political Party Court must be reported to the Indonesian Ministry of Law and Human Rights to obtain validation from the Ministry. Furthermore, the report is made a special decree made by the Indonesian Ministry of Law and Human Rights. If the person concerned still feels unfair about the decision in the order, the person concerned could sue the decree to the State Administrative Court. If there is still no justice from the decision issued by the State Administrative Court, the final step is an appeal to the Supreme Court of the Republic of Indonesia.

Diagram 1. Flow of political party testing submissions



Source: Jamaluddin (2020)

The judiciary's inclusion in this mechanism differs from the Political Party Law states. In optimizing the role of the Political Party Court, the author requires that all cases must be resolved through one door, namely the court of political parties, not other judicial institutions, or even form new management through a rival KLB. This concept has the advantage that there are no more political party disputes for which the Political Party Court does not know the internal problems because all conflicts must start from here.

Furthermore, the role of the judiciary, namely the State Administrative Court to the Supreme Court of the Republic of Indonesia, is no longer in the realm of personal problems of political parties. Still, the role of the Administrative Court is more focused on testing the SK issued by the RI Ministry of Law and Human Rights; the arguments here are no longer between political

party cadres of party administrators. However, the plaintiff from the cadres/management who sued the decree was with the RI Ministry of Law and Human Rights. The following is a flowchart of the concept of optimizing a single door for resolving political party disputes through the Political Party Court to the Supreme Court of the Republic of Indonesia.

4. Conclusion

The internal dispute resolution mechanism for Political Parties regulated in Political Party Law makes the role of the Political Party Court less than optimal. In some cases, cadres and their administrators ignore the part of the Political Party Court, which prefers to create a rival KLB rather than resolve internal problems. This is motivated by the Political Party Law, which provides another mechanism through the District Court and the Supreme Court of the Republic of Indonesia. Likewise, other means are not regulated in the law but are carried out in several cases, asking for legal tendencies through the Indonesian Ministry of Law and Human Rights. The results of this study are the need for a new legal concept to optimize the role of the Political Party Court and a one-door mechanism for resolving internal political party disputes. First, All cases, conflicts, and debates that occur within political parties must be resolved through the Political Party Court. Second, The Political Party Court must report the results of its decision to the Indonesian Ministry of Law and Human Rights to be legalized by state law. Third, suppose the party cadres/managers have not received the results. In that case, they can file a lawsuit to the State Administrative Court, with the object of the issue being a decree from the Ministry of Law and Human Rights of the Republic of Indonesia. If they still have not received a decision from the Administrative Court, the final step is to appeal to the Supreme Court of the Republic of Indonesia.

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References

- Anggriawan, F. (2020). Reformulasi domain hukum ideologi Pancasila oleh Badan Pembinaan Ideologi Pancasila. *Jurnal Cakrawala Hukum*, 11(1), 31-40. DOI: <https://doi.org/10.26905/idjch.v11i1.4045>.
- Asshiddiqie, J. (2006). Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi. *Jurnal Konstitusi*, 3(4), 6-27.
- Jamaluddin, J. (2020). Kewenangan Mahkamah Partai Dalam Penyelesaian Konflik Internal Partai Politik Lokal Di Aceh Berdasarkan Undang-Undang Nomor 2 Tahun 2011 Tentang Partai Politik. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(1), 29-47. DOI: <https://doi.org/10.29103/sjp.v8i1.2486>.
- Marzuki, P. M. (2017). *Penelitian hukum*. Jakarta: Kharisma Putra Utama.
- Mochtar, Z. (2019). Pertanggungjawaban Partai Politik Yang Melakukan Tindak Pidana Korupsi. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 31(2), 157-173. DOI: <http://dx.doi.org/10.22146/jmh.29199>.
- Muladi. (2002). *Politik dan Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.
- Nahuddin, Y. E. (2015). Pertanggungjawaban Keuangan Partai Politik Menuju Tata Kelola Partai Politik Yang Baik. *Jurnal Cakrawala Hukum*, 6(2), 276-292. DOI: <http://dx.doi.org/10.26905/idjch.v6i2.1462>.
- Permana, T. C. I. (2016). Model Penyelesaian Perselisihan Partai Politik Secara Internal Maupun Eksternal. *Jurnal Hukum dan Peradilan*, 5(1), 35-52. DOI: <http://dx.doi.org/10.25216/jhp.5.1.2016.35-52>.
- Porto, B. L. (1991). The Constitution and Political Parties: Supreme Court Jurisprudence and Its Implications for Party-building. *Const. Comment.*, 8, 433.
- Soedarno. (2005). *Mahkamah Konstitusi Sebagai Pengawal Demokrasi; Penyelesaian Sengketa Hasil Pemilu 2004 oleh Mahkamah Konstitusi Republik Indonesia RI*, Jakarta. Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia RI.
- Suwito, & Patra, D.D., (2016). *Perselisihan Internal Partai Politik Dalam Berbagai Putusan Pengadilan*. Jakarta: Adhi Sarana Nusantara.
- Wington, R. C. (1999). American Political Parties Under the First Amendment. *Journal of Law and Policy*, 7(2), 2. Available at: <https://brooklynworks.brooklaw.edu/jlp/vol7/iss2/2>.