

## Juridical Analysis of Settlement of Internal Political Party Disputes by Party Tribunal in Indonesia

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**Abstract:** This study aimed to analyze the existence of a party tribunal in resolving internal political party disputes under the provisions of law number 2 of 2011 concerning Amendments to Law Number 2 of 2008 regarding Political Parties. Its existence is designed as an internal tribunal to quickly examine and decide cases of internal party disputes with certainty and justice. However, party tribunals and the decisions made have yet to be able to assist political parties in resolving disputes efficiently and effectively. This study used normative legal research methods with a statutory, case, and conceptual approaches. The results of this study indicate that the internal dispute resolution mechanisms of political parties are carried out through the political party tribunal. Suppose a settlement through the political party tribunal has yet to be reached. In that case, the settlement of political party disputes is carried out through the District Tribunal, and it can be followed by filing an appeal to the Supreme Court. Arrangements related to internal conflicts must be regulated more clearly in the law to create democratic regulations and uphold the principle of legal certainty.

**Keywords:** Political Party Disputes, Party Tribunal, Political Parties.

### 1. Introduction

The Republic of Indonesia is a democratic country that gives its citizens freedom to associate, and express their opinions and aspirations, one of which is to form a political party in forming a government that can fight for the aspirations and goals of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia.<sup>1</sup> A democratic system must be guaranteed that the people are fully

involved in planning, regulating, implementing, monitoring, and assessing the implementation of the functions of power.<sup>2</sup> In a democratic country, the people who own and control the power and power itself is performed for the interests of the people themselves. Initially, democracy was an idea of the pattern of life that emerged as a reaction to the inhuman social and political reality in society.<sup>3</sup> State government based on the constitution is one reflection of the concept of the rule of law. The concept of a prosperous and just society is a concept that contains responsive justice values, which

<sup>1</sup> Mexasai Indra, *Gagasan Penyederhanaan Jumlah Partai Politik Dihubungkan Dengan Sistem Pemerintahan Republik Indonesia*, Jurnal Ilmu Hukum, Volume 2, no. 2, (2013): 6.

<sup>2</sup> Jimly Asshiddiqie, *Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi*, Jurnal Konstitusi, Volume 3 no. 4, Desember, (2006): 6.

<sup>3</sup> Zulkifli Aspan, Abdul Razak, Marthen Arie, R. Muhammad Thamrin Payapo, *Institutional Strengthening of The General Election Commission in Order to Realizes Fair and Just Election*, Journal of Law, Policy and Globalization, www.iiste.org, ISSN 2224- 3240 (Paper) ISSN 2224-3259 (Online) Vol. 66, (2017): 14.

support the goals of the rule of law. In the values of justice, people get the same rights, both social rights and political rights as regulated in the state constitution.<sup>4</sup>

One of the modern democratic institutions, which is recognized and accepted as a medium for consolidation, distribution, relocation, and representation of the aspirations of values, and interests of civil society by placing their representatives in government political positions is a political party. In terms of formation, political parties are founded by a group of individual citizens who are private legal entities, but in terms of function, the establishment of parties is intended and aimed at the public interest.<sup>5</sup> The combination of these two aspects places political parties as: first, democratic institutions that reflect the freedom and equality of every citizen to associate and gather to fight for the ideals of shared values and interests; and second, based on the results of the general election, placing their representatives in government political positions that represent the interests of the people on the one hand and the state on the other ( quasi-private ).<sup>6</sup> In carrying out its management, there will inevitably be disputes between members of political parties, members of political parties, and political party administrators, and even disputes among political party administrators. The types of political party disputes, it is regulated in the Law on Political Parties, while the mechanism for the Interim Change of Council members which also has the potential to become a political party dispute is regulated in the Law on MD3.<sup>7</sup>

Referring to the legal politics of the establishment of Law Number 2 of 2011 concerning Political Parties, the resolution of internal political party disputes should not underestimate the resolution of disputes through the courts of political parties and

indirectly make the district court the first step in resolving internal disputes of political parties. Because in essence, the spirit of the establishment of a political party court with democratic legal principles and the principle of openness applied to strengthening the institutionalization spirit of political parties can be achieved so that, the ideals of a rule of law and democracy are realized in the arrangement and strengthening of political parties in Indonesia. The problem is that the AD and ART of political parties in general do not clearly and unequivocally explain the procedural mechanism of the Party Court. As has been examined from various AD and ART of Political Parties where the mechanism for resolving internal disputes is not clearly and concretely regulated that it has implications for legal uncertainty.

This is what makes internal party disputes drag on. The model and mechanism for resolving internal disputes with such an arrangement have resulted in disputing party members choosing the District Court over the Party Court because it provides more legal certainty. The existence of normative ambiguity, inconsistency and unclear arrangements in the Political Party Law Number 2 of 2011 creates turbulence in its application which is only regulated in 2 articles with 8 paragraphs and there is no legal arrangement for the procedure. The procedural law has so far been used in examining cases of political party

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<sup>4</sup> Zulkifli Aspan, *Jurnal Hukum "Prinsip-prinsip Negara Hukum dan Demokrasi (Implementasi Good Governance dalam penyelenggaraan Negara)"* 10 Oktober 2013, Description Page.

<sup>5</sup> Robert C. Wigton, "American Political Parties Under The First Amendment", *Journal of Law and Policy*, Volume 7, Issue 2, (1999): 411.

<sup>6</sup> Brian L. Porto, "The Constitution and Political Parties: Supreme Court Jurisprudence and Its Implication For Party Building", *Constitutional Commentary*, Volume 8, (1999): 434.

<sup>7</sup> Tri Cahya Indra Permana, *Model Penyelesaian Perselisihan Partai Politik Secara Internal Maupun Secara Eksternal*, *Jurnal Hukum dan Peradilan*, Volume 5 , no. 1, March (2016): 36.

disputes using its method in each political party without any similar arrangements in the Political Party Law.

## 2. Method

The research conducted is library research by examining library materials or secondary data, which can be called normative legal research or library law research.<sup>8</sup> Referring to Peter Mahmud Marzuki,<sup>9</sup> that legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The approach used is the statutory, case approach, and conceptual approach. The data sources in this study used secondary data obtained from library materials. The data collection technique in this study uses the document study method, namely the data collection method by collecting secondary data generated from documentary research. This approach often uses the term normative juridical approach. This approach is carried out to examine all laws and regulations related to problems (legal issues).<sup>10</sup>

## 3. Results and Discussion

### 3.1 Procedures for resolving internal disputes of political parties in Law Number 2 of 2011

Political Party disputes are stated in the explanation of Article 32 of Law Number 2 of 2008 in conjunction with Law Number 2 of 2011. In the Elucidation of the provisions of Article 32 of Law Number 2 of 2008 in conjunction with Law Number 2 of 2011 that what is meant by "political party disputes" includes, among others: (1) disputes relating to management; (2) violation of political rights; (3) dismissal without a clear reason; (4) abuse of authority; (5) financial accountability; and/or (6) objections to the decisions of political parties.

**Table 1.** Types of political party disputes and legal remedies according to Political Party Law no. 2 of 2011.

No.	Types of Political Party Disputes	Legal Effort
1.	Disputes regarding management	Final and Binding Internally with the Decision of the Political Party Court.

<sup>8</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Rajawali Pers, 1990, (Jakarta): 15.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, (2008): 133.

<sup>10</sup> Irwansyah, *Penelitian Hukum (Pilihan metode dan praktik penulisan artikel)*, Yogyakarta, Mirra Buana Media, (2020): 133.

2.	Violation of the rights of political members, dismissal for no apparent reason, abuse of authority, financial responsibility, and or objections to the decisions of political parties.	Legal remedies can be submitted to the District Court and the Supreme Court
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Referring to the new political party provisions, namely Law Number 2 of 2011 as an amendment to Law Number 2 of 2008 it is stated that the procedure for resolving internal disputes of political parties based on Law Number 2 of 2011 must be resolved first internally through the Party Court. Political. This settlement procedure refers to the provisions of Article 32 of Law Number 2 of 2011 concerning Political Parties which states that:

- 1) Political Party disputes are resolved by internal Political Parties as regulated in the AD and ART.
- 2) Settlement of internal political party disputes as referred to in paragraph (1) is carried out by a political party court or other designation established by a political party.
- 3) The composition of the political party court or other designations as referred to in paragraph (2) shall be submitted by the political party leadership to the ministry.
- 4) Settlement of political party internal disputes as referred to in paragraph (2) must be completed no later than 60 (sixty) days.
- 5) The decision of the political party court or other designations is final and internally binding in the case of disputes relating to the management

Based on the provisions of Article 32 of Law Number 2 of 2011 concerning Political Parties, it is clearly stated procedurally that if there is an internal dispute within a political party, then the provisions of the party as regulated in the Articles of Association and Bylaws are handed over to the Political Party Court. Another term or designation for the Political Party Court in each party can be different but has the same essence, namely the authority to resolve party disputes internally before being resolved externally.

Then Article 33 of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties states that:<sup>11</sup>

- 1) If the settlement of the dispute as referred to in article 32 is not reached, the settlement of the dispute is carried out through the District Court.
- 2) District Court decisions are decisions of the first and final level, and can only be appealed to the Supreme Court.

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<sup>11</sup> Pasal 33 Undang-Undang Nomor 2 Tahun 2011 tentang Perubahan atas Undang-Undang Nomor 2 Tahun 2008 tentang Partai Politik.

- 3) The case as referred to in letter a is settled by the District Court no later than 60 (sixty) days after the lawsuit is registered at the Registrar's Office of the District Court and by the Supreme Court no later than 30 (thirty) days after the memorandum of cassation is registered at the Registrar's Office of the Supreme Court.

### **3.2 The Power of the Decision of the Party Court is Final and Internally Binding.**

The binding power of a Party Court Decision related to its competence is divided into two types, namely: first, absolute competence includes (1) violation of the rights of members of a political party, (2) dismissal without a clear reason, (3) abuse of authority, (4) financial accountability, and/or (5) objections to the decisions of Political Parties; second, absolute competence is conditional, namely the decision of the Party Court regarding internal management disputes. There is no legal remedy that can be taken by members of a political party against the Decision of the Party Court regarding management disputes. Management disputes can only be submitted to the District Court if the party does not have a Party Court or the Party Court does not arrive at a dispute resolution decision. The decision of the District Court is first and final and it is only possible to submit an appeal to the Supreme Court for parties who are dissatisfied and do not accept the Decision of the District Court.<sup>12</sup>

The formulation of the article "is final and internally binding" means that no internal party with legal standing can challenge the decision of the Party Court. On a contrary, it means that the decision of the Party Court is not final and binding externally to members of the political party. The government, legislative institutions, judiciary institutions, and the wider community who are not members of a political party are not bound by the decision of the Party Court. The Party Court decides to settle the management dispute, and the Party Court Decision is final and internally binding. There is no legal remedy that can be taken by both the management and members to amend the Decision of the Party Court. The parties who are dissatisfied and reject the Decision of the Party Court are, by law, forced to accept the Decision of the Party Court. The formulation of the article, "is final and internally binding" closes the legal efforts of all parties, including the management, participants in the party's highest decision-making forum, and members.<sup>13</sup> Wise and wise steps that can be taken by parties who do not accept the Decision of the Party Court regarding management disputes are 1) to declare leaving the party membership and/or joining other political parties, or 2) to form a new political party. The government as the party authorized to ratify the management of political parties following the construction of Article 32 paragraph (2) of the Political Party Law, is not necessarily bound to implement the decision of the Party Court regarding management disputes. Even though the ratification of the management is declarative, the government is indirectly given independent and independent authority by

<sup>12</sup> Firdaus, Nalom Kurniawan, *Kekuatan Putusan Mahkamah Partai Ditinjau Dari Sistem Kekuasaan Kehakiman Menurut UUD 1945*, Jurnal Konstitusi, Volume 14, March (2017): 658.

<sup>13</sup> *Ibid*, P. 660.

law to examine, assess and ensure that the board won by the Party Court is decided by the mechanisms and procedures of the laws and regulations and guarantees a sense of justice for the parties.

Dwi Darajatun Patra Suwito in his book gives the opinion that the decision of the party court can be interpreted as "the final decision and there is no other decision from any institution" if the party court through its decision has provided a concrete and firm settlement guide or does not have multiple interpretations of the disputes that occur.<sup>14</sup> If the decision of the Political Party Court does not provide a concrete solution, is still multi-interpreted, and does not provide legal certainty so that it is difficult to implement, then the authority is given to the judiciary (district court) to resolve the dispute.

### **3.3 Dispute Settlement Mechanism for Violation of the Rights of Political Party Members and Dismissal of Political Party Members without Clear Reasons.**

As stated by John Locke & Rousseau in Mardenis,<sup>15</sup> political rights including the right to vote and be elected in public office are included in the right to participate in government, which are human rights that must be protected. The same thing was said by Bagir Manan,<sup>16</sup> that civil rights recognize and protect the fundamental rights of a human being related to his dignity as a private being, while political rights are related to public life.

Based on the description of the previous arrangement, the above conceptions and theories must be correlated with the rules and mechanisms for the dismissal of members of political parties and violations of the rights of members of political parties as part of strengthening legal protection and human rights in political party institutions as pillars of democracy. This is to avoid obscurity of norms, application of norms, and misunderstandings within the party, especially if the dismissal is related to the change of elected legislative candidates. So it is necessary to revise Law Number 2 of 2011 concerning Political Parties, in which the Political Party Law is not related to the Election Law, namely, there is a mechanism related to how the process of dismissal and termination of membership is applied to all political parties. That way there will be a mechanism that can provide certainty for all. Indeed, normatively, the law on political parties has contained rules regarding the dismissal of its members, but the current regulations have not been able to answer speculations that tend to have unilateral interests aimed at political parties if any of their members are fired, so it is not surprising that some members have been fired. name can be rehabilitated and can again become a member and administrator of the party concerned. Especially if the dismissal of members of a political party correlates with their status as candidates for

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<sup>14</sup> Dwi Darajatun Patra Suwito, *Perselisihan Internal Partai Politik dalam Berbagai Putusan Pengadilan*, Jakarta Selatan: ASN Media, (2017): 78.

<sup>15</sup> John Locke & Rousseau Dalam Mardenis, "Kontemplasi Dan Analisis Terhadap Klasifikasi Dan Kebijakan Politik Hukum Penegak HAM Di Indonesia", *Jurnal Rechstvinding*, Volume 2 Issue 3, (2013): 455-456.

<sup>16</sup> Bagir Manan, *Perkembangan Pemikiran Dan Pengaturan Hak Asasi Manusia Di Indonesia*, Bandung: Alumni, (2001): 101.

elected legislative members, which results in the replacement of elected candidates before the inauguration of legislative members. This is of course a real violation of the rights of members of an elected political party who should have been inaugurated but were harmed by such problems.

The phenomenon of changing candidates for legislative members by political parties before the inauguration occurs a lot. The candidates who are declared elected should be the ones who get the most votes in the general election, not the party authority that determines who will sit in the DPR and DPRD seats. Because based on the provisions of existing legislation and the decisions of the Constitutional Court as well as the General Election Commission regulations, the determination of the elected candidates is entirely based on the majority votes obtained by the legislative candidates. However, on a practical level, political parties take steps to dismiss candidates with the most votes so that the desired candidates can occupy seats in the DPR or DPRD. Again and again, this is based on the dismissal of members of political parties for unclear reasons which results in violations of the rights of members of political parties. The types of political party disputes, it is regulated in the Law on Political Parties, while the mechanism for the Interim Change of Council members which also has the potential to become a political party dispute is regulated in the Law on MD3.

**Table 2.** Existence of Dispute Resolution Cases Violation of the rights of members of political parties and dismissal without clear reasons.

No	Identity	Settlement Decision	Findings in the Contents of the Decision
1.	<b>Hasan, S.E., Member of the Democratic Party.</b>	1. The decision of the Democratic Party Court Number: 237/DPP- PHPU/2014 2. Samarinda District Court Decision Number: 04/Pdt.G/2015/PN	1. The ruling of the Democratic Party Court essentially stated that Hasan, SE, was proven to have committed acts that were contrary to the AD ART, Code of Ethics, and the Democratic Party's Integrity Pact, terminated membership from the democratic party

		<p>Smr</p> <p>3. Supreme Court Decision Number: 61 K/Pdt.Sus- Parpol/2017</p>	<p>and appointed Br. Normansyah, SE, as Member of DPRD Kota Samarinda replacing Br., Hasan, SE</p> <p>2. The verdict of the Samarinda District Court essentially stated that it was null and void and had no legal force to bind the decision of the Democratic Party Court Number: 237/DPP-PHPU/2014, the dismissal of Hasan, SE</p> <p>3. The decision of the Supreme Court granted the cassation request of the Democratic Party Court and the Petitioner for Cassation II Normansyah, SE, annulled the decision of the Samarinda District Court Number: 04/Pdt.G/2016/PN Smr and in the main case rejected the plaintiff's claim in its entirety.</p>
2.	<p><b>Dian Ayunita Prasstumi,S .T. Member of Democratic</b></p>	<p>1. The decision of the Democratic Party Court Number: 023/PIP-MP/2019</p> <p>2. Central Jakarta District Court</p>	<p>1. The ruling of the Party Court stated that the respondent was proven to have committed an act that was contrary to the law, AD ART, party code of ethics, and the integrity pact</p>



	<p><b>Party</b></p>	<p>Decision Number: 233/Pdt.Sus.Parpol/2020/PN.Jkt Pst</p> <p>3. The decision of the Supreme Court Number: 1228 K/Pdt.Sus-Parpol/2021</p>	<p>of the democratic party, dismissing Ms. Dian Ayunita Prasstumi from the membership of the Democratic Party, appointed Br. HM Zainul Jihad as Member of DPRD Kab. Jombang replaces Ms. Dian Ayunita Prasstumi.</p> <p>2. The decision of the Central Jakarta District Court essentially declared null and void the decision of the Democratic Party Court Number: 023/PIP-MP/2019.</p> <p>3. The decision of the Supreme Court essentially stated that it rejected the petition for cassation from the petitioners; DPP Democratic Party, and the Democratic Party Court.</p>
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### 3.4 Principles of Procedural Law of Political Party Courts

It is the settlement of disputes through the courts that requires rules of the game known as procedural law. The rules of the game or procedural law are intended as a means to implement the rules of a substantial nature. Legal rules that are substantial we commonly call material law, on the other hand, procedural law is also commonly called procedural law.<sup>17</sup> Likewise, in the course of the process at the Party Court, it requires formal law or procedural law.

The procedural law that applies to political party courts is not regulated in detail in the Political Party Law. In the Political Party Law, there are only regulations regarding the maximum settlement period of 60 (sixty) days and the nature of the decisions of the political party courts in disputes relating to management. The unregulated procedural law

<sup>17</sup> Achmad Ali, *Menguak Tabir Hukum*, Kencana Prenada Media Group, Jakarta, (2015): 337-338.

of political party courts in Political Party Law is likely to provide an opportunity for internal political parties to make their procedural law. This is understandable because the administrators and members of a political party are of course the party who best understands the conditions and customs of the political party, including the mechanism (procedural law) that can be applied effectively in the context of resolving internal disputes.<sup>18</sup>

Procedural law can be regulated in the articles of association and by-laws or in regulations made by the political party court itself. Although there is a broad authority in making internal regulations, these provisions must not conflict with the provisions of the Political Party Law as a source of obtaining authority. For example, the settlement period in the party court is determined to be a maximum of 60 (sixty) days, this provision certainly cannot be deviated by changing it to a longer one so that the settlement of disputes will be longer and more complicated.<sup>19</sup> The idea of institutionalizing political parties is an effort to strengthen the independence or autonomy of political parties. The principles of judicial power in *The Bangalore Principles of Judicial Conduct*,<sup>20</sup> namely independence, impartiality, integrity, propriety, equality, competence, and thoroughness for judges can also be used as references in strengthening the Political Party Court.

The procedural law that must be applied in the Party Court, among others, is reflected in the principles of a good judiciary, namely, among others: the principle of *Audi et alteram partem*, the principle of fairness, the principle of impartiality, the principle of openness, the principle of justice and the principle of making appropriate decisions. The embodiment of the concept of procedural law into party regulations is left to the political party concerned to regulate it, for example, technical matters regarding dispute registration, trial scheduling, court summons, examination in a trial consisting of answers and answers, evidence and conclusions, decision making and the format of the decision itself. as long as the above principles are met. Principle of *Audi et alteram partem*, the implementation is for example if the Petitioner is allowed to submit the arguments for the petition and its evidence, the Respondent must also be given the same opportunity to present the arguments for his refutation and the evidence.<sup>21</sup>

The principle of impartiality implies that judges should not side with anyone except for truth and justice. Judges are prohibited from discriminating between litigants and are prohibited from being sympathetic or antipathetic to them. Another good judicial principle that also deserves attention is that the decision must be given at an appropriate time, it should not be given in too long a time but also not too soon. For example, a maximum of 30 (thirty) days must be decided, it is deemed sufficient to decide disputes other than matters of management. The next very important thing is that the decision-making

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<sup>18</sup> Dwi Dorajatun Patra Sawito, *Op. Cit.* 45

<sup>19</sup> *Ibid.*

<sup>20</sup> *The Bangalore Principles of Judicial Conduct*, November 25 and 26, 2002.

<sup>21</sup> Tri Cahya Indra Permana, *Model Penyelesaian Perselisihan Partai Politik Secara Internal Maupun Eksternal*, Volume 5, Nomor 1, March (2016): 35 – 52.

mechanism must be carried out in a deliberation meeting of judges which is carried out by deliberation and consensus after listening to the legal opinions of the judges of the party court. If a decision in a deliberation meeting of judges cannot be made by consensus, then the decision is made based on a majority vote, therefore the number of judges handling disputes must be odd in number. If the majority vote is also not achieved, then the votes/opinions of the chairman of the Assembly are dropped. And most importantly of all, the decision must reflect a sense of justice and provide legal certainty to be able to resolve internal political party disputes.

#### 4. Conclusion

The Party Court as an internal judiciary has the attributive authority to examine, hear, and decide on internal party disputes quickly, simply, with certainty and justice, but in reality, it has not been effective and efficient. The mechanism for resolving internal political party disputes regarding violations of the rights of members of political parties and dismissal without clear reasons is regulated in the Political Party Law Number 2 of 2011 which is resolved through the court of political parties and if a settlement is not reached, then the settlement is carried out through the District Court and only can be appealed to the Supreme Court. The power of Party Court Decisions looks very strong internally but very weak externally because of its position as part of the party's internal organs which has implications for the credibility of dispute resolution so that it always ends externally.

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