

The Parties in Indonesia's Administrative System in the House of Representative Memberby

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ABSTRACT

The terms and ordinances of the dismissal of members of the House of Representative (DPR) are regulated by law, as stated in Article 22B of the 1945 Constitution of the Republic of Indonesia. Political parties are granted the authority to recall or dismiss DPR members during their tenure under the Law on Political Parties and the Law on DPR, DPD, and DPRD. The principle of people sovereignty has been deemed to be incompatible with the mechanism of recall through political parties, as the people are not involved as electors in it. The motivation for political parties to recall members of the Democratic People's Republic of Korea (DPR) is also heavily influenced by the interests of the party, including those of its executives. This is why it is imperative to regulate the recall mechanism for DPR members by political parties in order to ensure legal certainty and justice for the members of DPR and the general public as electors.

Keywords: recall, House of Representative, political party

A. Introduction

The State of Indonesia is a sovereign state composed of the population. The implementation of general elections is one of the ways in which people's sovereignty is implemented. The political party is one of the participants in the election. Political parties are entitled to nominate members of the DPR (House of Representatives), DPRD (Regional People Representative Assembly), as well as the President and Vice President, during the election. Following the right of political parties to nominate members of DPR, the right to recall is also granted. Legislation does not contain recall terminology; however, there is a recall nature to the process, which involves the withdrawal of House of Representative members by political parties, who are then dismissed and substituted with other members before the duty period concludes. The tenure of the drawn member of the DPR is referred to as inter-change time (pergantianantarwaktu).

The term "recall" has been in use since the inception of the New Order government, when Law Number 10 of 1966 was issued regarding the positions of the People's Consultative Assembly (MPR) and the House of Representatives (DPR) Gotong Rorongahead of the General Election. Recall was not regulated in Law No. 4 of 1999 on the Composition and Position of the People's Consultative Assembly and the House of Representative, which marked the beginning of the reform era. Nevertheless, the recall of members of the DPR was reinstated when Law No. 4 of 1999 was replaced

by Law No. 22 of 2003. This provision is still in effect today and is referred to as Law No. 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional of House of Representatives People. The principle of people's sovereignty is considered to be incompatible with the right of political parties to recall, as the candidates for DPR members are nominated by political parties but are directly elected by the people. The individuals who are eligible to become members of the DPR are those who receive the most votes in elections. Consequently, it is perceived as unjust to restrict the recall right to political parties and exclude individuals who become electors. This paper examines the regulation of recall rights and the legal issues that arise in relation to the recall rights by political parties in relation to the mechanism of filling the membership of the DPR, taking into account the aforementioned background.

B. Research Results and Discussion

Legislation does not recognize the term recall. The term used is "stopping between times." The recall arrangement or "inter-time dismissal" arrangements are governed by laws governing the DPR and the Law on Political Parties. Here is the recall arrangement in the history of Indonesian state administration. The first regulation on the DPR after independence was with Law No. 7 year 1953 on the Election of Constituent Assemblies and Members of the House of Representatives. This Act was established when the 1950 Constitution was enacted. Article 1 Paragraph (1) provides that "Constituent Assembly members and members of the House of Representative shall be elected by Indonesian Citizens, who are eleven years old or has married."

The members' nomination of the House of Representative as stipulated in Article 36 is "a candidate is presented as a person in a list of individual candidates hereinafter referred to as individual lists or together other candidates in a list of candidate groups hereinafter referred to as a collection list." The voting system is provided by voters vote on a list by casting a mark of a political party or an election participant's organization. Voters vote to a candidate by writing the number of the list and the number and name of the candidate on the ballot. To make it easier for voters to write down the names of candidates for the elected members of the House of Representative, in each voting room a permanent list of candidates will be added. From this election mechanism, it is clear that voters in voting not only vote for political parties or election participating organizations but also directly vote for candidates.

The mechanism of dismissing is not set in detail. Article 112 stipulates a part-time dismissal mechanism which is quite simple, ie if there are members of the DPR whopart-time dismissal, then the Speaker of the House of Representative shall immediately notify the Committee of the Indonesian Elections to subsequently promptly determine the substitution of the terminating member according to the rules on the filling of the membership vacancy of the House of Representative.

Filling in the vacant membership of House of Representative, based on Article 102 paragraph (2) letter c, is carried out through the following mechanism: if in an electoral district where a candidate has to be replaced, no candidate has not been elected, the candidate shall be replaced by a candidate who obtains "percent number of votes" among the candidates who have not been elected in

all other constituencies. The percent number of votes is the percent number of votes a candidate receives compared to the electoral divisor in his/her election.

Based on the above description, it can be seen that recall or part-time dismissal for members of House of Representative are not carried out by political parties or election participating organizations, but the reasons or causes of part-time dismissal are already specified in the Act. At the beginning of the New Order, Law Number 10 Year 1966 on the Status of the Provisional People's Consultative Assembly and the House of Representative Gotong Royong Approached the General Election. This law does not regulate the mechanism of filling the membership of the DPR. Under Article 2, members of the DPR-GR consist of Political Groups and Group of Work. Article 3 determines that members of the DPR-GR at the time of entry into force of this Act are still member, are remain as members of the House of Representatives election results that begin their duties and authorities. So, there is no election held to elect members of the House of Representatives, because members of the existing House of Representatives based on the 1955 election remained a member of the House, without having to be elected again.

Law No. 10 of 1966 does not govern the conduct of elections to elect members of the House of Representative because based on the MPRS Decree Number XI/MPRS/1966 on General Election, it is stated that the holding of the General Elections by voting shall be made no later than 5 July 1968. The absence of regulation on the election of DPR members does not mean there is no interpreter about recall. In relation to the recall, this law does not recognize the term recall, but the existing one is "replaced" and "part-time dismissal." Article 15 provides that members of the MPR-S/DPR-GR may be replaced according to the following provisions:

- a. Members of the Political Group may be substituted at the request of the party concerned.
- b. Members of the Working Group whose organizations are affiliated with one political party may be replaced by the organization concerned with the approval of the parent party.
- c. Members of the Working Group whose organizations are not affiliated with any political party may be substituted at the request of the organization or the agency concerned.
- d. Regional Representatives in the MPRS by the DPRD may be replaced by the decision of the provincial DPRD concerned.

Replacement mechanisms over time are quite simple. According to the Elucidation of Article 15, the interim replacement of members of DPR-GR must be preceded by notice of the Leaders of MPRS/DPR-GR, so that if there is any difference of opinion between the members to be replaced with the party/mass organization concerned. The leader of MPRS/DPR-GR can give their best effort. Nevertheless, it is in the final stage that the party/mass organization determines their own way, by avoiding arbitrary acts.

From the description of the reasons for the replacement of time, there is no reason that concerns the aspirations and interests of the people, whereas members of the House of Representative are the people's representatives who voiced and strived for the aspirations and interests of the people. It is precisely political parties or organizations that are given a great authority to replace the part-time dismissal members of the DPR-GR. This law does not regulate the reasons for what, so that political parties can dismiss the inter-time. This intermission is highly dependent on the political party. This intermission replacement mechanism by a political party can be very political because it is not strictly

regulated what reasons may cause the members of DPR-GR to be dismissed from their duty in particular time.

Law No. 16 year 1969 applies throughout the period of the New Order government with the changes made twice, namely by Law Number 5 Year 1975, and secondly with Law No. 2 of 1985. The House of Representatives under Article 10 consists of members of the Political Group and the Working Group (*GolonganKarya*). The total number of members of the House of Representative is four hundred and sixty, consisting of three hundred and sixty persons elected in the election and a hundred persons appointed. One hundred persons appointed from the Armed Forces Working Group whose appointment was appointed by the proposal of the Minister of Defense and Security/Commander of the Armed Forces and inaugurated by Presidential Decree, and Non-Armed Forces of the Working Group was appointed by the President on both the organization's proposal and the President's initiative.

The number of members of the House of Representative (DPR) was then added in the event of amendment to the law, a five-hundred-person. They were four hundred people elected in the election, and a hundred were appointed. The elected members of the House of Representative shall be appointed from the Armed Forces and their appointment appointed by the President at the suggestion of the Commander-in-Chief.

This Act was formed in the Reform Era after the fall of the New Order government. At this time there is still doctrine of *Dwifungsi* ABRI (Republic of Indonesia Armed Force), and there has been no separation between the TNI (Indonesian National Army) and Police. According to Article 11, the filling of members of the House of Representative shall be based on election results and appointments. The House of Representatives consists of members of elected political parties, and appointed ABRI (Republic of Indonesia Armed Force) members. The number of members of the House of Representative is five hundred members comprising four hundred and sixty-two members of the Political Parties, and the appointed members of the Armed Forces of thirty-eight persons

The mechanism of part-time dismissal is simply arranged. Members of the House of Representative who are temporarily suspended are replaced by nominees nominated by the relevant Central Political Party Leadership Council drawn from the permanent candidate list of political party representatives from the same electoral district as the ones he replaces. For members of the House of Representatives from ABRI, they will be replaced by candidates submitted by ABRI (Republic Indonesia Armed Force) Leaders. The part-time dismissal of members of the House of Representative is due to unfaithful to the ideals of the Proclamation of 17 August 1945, Pancasila as the basis of the state, and the 1945 Constitution, proved to be a former member of the PKI's (Indonesian Communist Party) prohibited organization, including its mass organization, or not someone directly or indirectly involved in G-30-S/PKI or any other prohibited organization, is being revoked of its right to vote by a court decision that has obtained permanent legal force, or is imprisoned by a court decision that has permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more, is dismissal with disrespect. Likewise, he/she is proven to violate the oath/pledge of members of the House of Representative, and/or undertaken to conduct business/work whose costs are derived from APBN (National Budget) and/or APBD (Regional Budget), dismissed with disrespect.

The law does not regulate and authorize political parties to change part-time dismissal. Interim replacements may only be made for the reasons set forth in Article 14 above. So, recall members of House of Representative by the political party is not mentioned in Law No. 4 of 1999. Article 17 of Law Number 22 Year 2003 stipulates that the number of DPR members is five hundred and fifty persons. All members of the House of Representatives are elected by election, no more members of the House of Representatives are appointed. Prospective members of the House of Representative are from all political parties, no more members of the House of Representatives from ABRI. Membership of the House is inaugurated by Presidential Decree.

The dismissal mechanism of members of the House of Representative proposed by political party is quite simple, which is directly proposed by the House Leadership to the President to be inaugurated by Presidential Decree. Interim dismissal because of political party proposals may be purely political, depending on the party or party elite. There is no apparent participation of the voters, but the full authority of political parties.

In contrast to intermittent dismissals due to political party proposals, for interim termination on the grounds that members of House of Representative cannot carry out their duties continuously or are unable to fulfill the terms, or violate the oath/promise, the code of conduct of the House of Representative, and/or not perform the obligations based on the result of examination by the DPR's honorary board. The mechanism is through investigation, verification and decision-making by the DPR's honorary board for complaints from the leadership of the House of Representative, the people, and/or the voters.

Based on the above description, intermission can be made through the mechanism of political parties and through the mechanism of the DPR's honorary body because of complaints from the leadership of the House of Representative, the people, and/or the voters. Members of the DPR who are dismissed from are replaced by candidates for the House of Representatives who get the most votes in the next list of votes for the same electoral district. Members of the DPR who were dismissed by the House leadership submitted to the KPU (General Election Commission), all submitted the name of the replacement candidate proposed by the political parties at the central level for verification. After receiving the recommendation of the KPU (General Election Commission), the leaders of the House of Representatives submitted the interim termination of members of the DPR and the appointment of members of the House of Representatives to the President to be inaugurated by Presidential Decree. Members of the House of Representative who substituted for inter-time dismissal will serve until the term of the member of the House of Representative has been replaced. However, if the term of office of members of DPR is inter-time dismissed less than four months, there will be no replacement.

This law was established when Indonesia has existed a DPD (Regional House of Representative) institution. Besides the MRP, DPR, and DPRD as the representative body of the people, there is another representative body, the DPD. Members of House of Representative are all elected by elections proposed by political parties. Members of the House of Representatives amounted to five hundred and sixty people. Inter-time dismissals can be made through the mechanisms of political parties, or through the mechanism of the DPR Honorary Board. The mechanism of a political party shall be conducted for reasons referred to in Article 213 paragraph (1)

a and b, and Article 213 paragraph (2) letter c, letter e, letter h, and letter i. The proposed dismissal is done by the leadership of a political party to the House leadership with a copy to the President. At the latest seven days after receiving the proposal for dismissal, the House leadership conveyed to the President to obtain the inauguration of the dismissal of members of the House of Representative. And within fourteen days of the receipt of the proposed dismissal from the House leadership, the President inaugurated the dismissal of members of the House of Representative by issuing a Presidential Decree.

Recall mechanism through the Honorary Board of the House of Representatives shall be conducted for reasons referred to in Article 213 paragraph (2) a, b, d, f and g after the results of investigation and verification as outlined in the decision of the Honorary Board of the House of Representatives from the leadership of the House of Representative, the people, and/or the voters. The decision of the Honorary Board of the House of Representatives regarding the dismissal of DPR members is reported to the plenary meeting to be submitted to the leadership of the political party. By the leadership of the political party the decision of dismissal shall be submitted to the leadership of the House of Representative and forwarded to the President to obtain the inauguration.

The mechanisms of inter-time dismissal depend on the reason for dismissal. For dismissal for reasons of Article 239 paragraph (1) a and b, and Article 239 paragraph (2) letter c, letter d, letter g and letter h, it is sufficient to propose by the leadership of a political party to the leadership of the DPR with a copy to the President. The House Leader is obliged to submit the proposal to the President at least seven days after receiving the proposal from a political party. The interim termination of members of the House is inaugurated by Presidential Decree.

Unlike the previous law, Law No. 17 year 2014 in Article 241 provides an opportunity for members of the DPR who are inter-time dismissed to object. Members of the House of Representative who are inter-time dismissed due to the reasons proposed by their political parties in accordance with the provisions of legislation, the relevant objections through the court. The interim termination of members of the House of Representative becomes legitimate after a court decision has been granted permanent legal force

The names of DPR members who are stopped or inter-time dismissed by the House leadership are submitted to the KPU (General Election Commissions), and the House leadership asks for the name of the replacement candidate. Members of the House of Representative who are terminated or inter-time dismissed shall be replaced by candidates for members of House of Representative from the same political party. The replacement candidate is the one who gets the most votes in the next election. The term of office of a member of the House of Representative which substituted for interim time shall be for the remainder of the term of the member of the House of Representative he replaces. Interim replacements are not carried out if the remaining term of members of the DPR is replaced less than six months.

The 1945 Constitution in Article 22B provides that "members of the House of Representative may be dismissed from office, whose terms and ordinances are regulated in law." Under the provisions of Article 22B, it appears that there is a possibility that a member of the House of Representative shall be dismissed before the end of his position. The reasons for dismissal are left entirely to the legislators, who are certain that the reasons for dismissal of members of the House

should not be arbitrary, but must reflect a sense of justice and provide legal certainty. The State of Indonesia based on the 1945 Constitution of the Republic of Indonesia is a people's sovereign state with representatives. By embracing representative democracy, the holding of elections is a must. Although candidate members of the House of Representatives proposed by political parties, but to be a member of the House should be elected directly by the people.

Members of the House of Representative elected directly by the people should fight for the aspirations and interests of the people who have chosen them, no longer fighting for the interests of political parties. Since they are elected to be the member of DPR they have the position of representatives of the people, not the representatives of political parties. The people can exercise control if DPR members do not fight for the aspirations and interests of the people, even the people should be able to withdraw their support by replacing the members of DPR in their term of office.

In current developments, members of House of Representative do not fight for the aspirations and interests of the people, even as if they have no longer any relationship with the people who choose them. The institutional relationship between members of the House of Representative and the people as voters after the elections is over, is not well established, resulting in the absence of a voter control mechanism with their representatives. The accountability of DPR members is weak or almost nonexistent. This lack of accountability cannot be separated from the absence of people's control mechanisms against their representatives. Similarly, the people cannot control the performance of their representatives. People are only needed when elections are held. The completion of the general election was abandoned, even by elected members of the House of Representatives. When they succeed in sitting in the House of Representatives, they are actually fighting for the interests of political party bearers.

One of the reasons that encouraged them to remain as party representative and not as peoples' representative was the recall of political parties. Recall of members of the House of Representative still happens today, although the regime changes, the electoral system changes, and the legislation also changes.

When the electoral system used is proportionally closed, political parties are given the authority to conduct a recall. Similarly, when a proportional system is used with an open list of candidates, political parties are also authorized by law to conduct recall.

Election is one of the implementation of people's sovereignty, which means that the people have the right to elect representatives sitting in the membership of DPR, even though the nomination is done by political party. People only participate in electing members of DPR, but the people never participate in the recall. In fact, the election is done by the people, means that the people have given legitimacy to members of House of Representative that they choose to fight for their aspirations and interests.

In reality, political parties have considerable authority in recalling, arguing that members of the House are perceived to have violated the Statutes or violate the policies of political parties, or their votes are not in accordance with the interests of their political parties, especially the interests of party elites. Recall for this reason is very dependent on the subjectivity of political parties, so it is contrary to the House of Representative function—as the representative of the people. Furthermore, members of the House who have a critical voice in dealing with a government policy that does not

side with the people and they fight for the aspirations and interests of the people, somehow, they become victims of recall by political parties.

Legislation in Indonesia does not authorize voters to participate in the inter-time dismissed of members of the House of Representative. So that it could happen a member of the House who really fight for the interests of the people, but his voice is different from the voice of his political party, will be the victims of recall. This will lead to the shifting sovereignty of the people into the sovereignty of political parties, or perhaps even the sovereignty of party elites.

Article 22B of the 1945 Constitution of the Republic of Indonesia states that members of the House of Representative may be dismissed from their positions in accordance with the law's terms and ordinances. The provisions of Article 22B of the 1945 Indonesian Constitution shall not be interpreted arbitrarily by the legislator. The legislation should reflect a sense of justice for political parties as well as for the people as voters. As a follow-up to the provisions of Article 22B, the Law on MPR, DPR, DPD, and DPRD requires the reasons for dismissal of members of the House of Representative due to death, resignation or involvement in criminal acts, and because of political party proposals.

The law does not provide criteria for members of the House of Representative who commit any acts or wrongs so that political parties can dismiss them. This will depend on the subjectivity of the leadership of political parties or political party elites. Similarly, the reason for dismissal from membership of the DPR is because the concerned dismissed as a member of a political party. It will also depend on the subjectivity of the leadership of political parties or political party elites. In fact, the people directly choose their members of the House of Representatives. People should involve in the mechanism of dismissal between members of the House of Representatives.

Recall mechanism based on the prevailing laws and regulations is done through two ways, namely the mechanism of political parties, and the mechanism of the Honorary Council. Dismissal through the mechanism of the political party is quite simple. The Party Leadership Council proposes to the House Leadership, then the DPR's proposal to pass it to the President for the issuance of a Presidential Decree on interim termination of members of the House of Representative. The Chairman of the House of Representative and the President in this case are not in a position to refuse or grant the proposal, but only take administrative measures only by giving approval and endorsement of the proposal of the Central Executive Board of the political party.

Some cases that have occurred with regard to the interim termination of members of House of Representative by political parties have taken its victims. It is said to be a victim because members of the DPR who are inter-time dismissed are actually fighting for the aspirations and interests of the people, but his voice is opposite to the idea of his political party. For example is the dismissal of Lily Wahid and Effendi Choirie by their political party—The National Awakening Party(PKB). Lily Wahid was dismissed because her voice was considered to violate the party's policy in the case of Century Bank, while the dismissal of Effendi Choirie because he supported the right to question the tax mafia, while the PKB rejected the proposed use of the right of inquiry. Yet in both cases they are fighting for the aspirations of the people. The voice of the people requires that both cases be resolved thoroughly.

C. Conclusions

The legal problem relating to recall rights by political parties is the change of the electoral system, which originally closed proportional system into an open proportional system. In an open proportional system, the people not only vote for political parties, but also elect their candidates directly. Candidates who get the most votes will sit in the House of Representatives. With this electoral system, recall should not only be the authority of political parties only, but also must involve the people as voters. The reason for recall is also not because his voice is against the political party's AD/ART (Regulations), but because the DPR member does not fight for the interests and aspirations of the people. Therefore, the regulation on recall of DPR members should involve the people as voters. There needs to be a clear and definite arrangement regarding the reasons for recall in order to provide a sense of justice for members of House of Representative and for the voters. Members of the House of Representative are elected directly by the people through elections, they should also include or involve the people as voters. It is necessary to amend Law No. 2 Year 2011 on Political Parties and Law No. 17 of 2014 on the People's Consultative Assembly, the House of Representative, the Regional Representatives Council, and the Regional House of Representative in relation to the right of political parties to inter-time dismissal their members. It requires the involvement of the community as a voter by requiring a certain number of voter approvals from the election areas of DPR members who will be recalled to agree or reject the proposal of a political party recall. In addition it is necessary also the legal process of recall in order to have legal certainty and provide a sense of justice.

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