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The Essence Of Political Party's Right To Recall Its Members In The House Of Representatives In Indonesia's Constitutional System

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Abstract: This research aims at analyzing the essence of political party's right to recall its members in DPR, whether this right to recall its members in DPR has been consistent with the principles of law-based democratic country and what juridical consequences of this right to recall if it remains in the political party's hand. This is normative law research. The research result indicates that the essence of political party's right to recall its members in the House of Representatives is to allow the political party to monitor their members who represent them in the parliament for this party is nevertheless a political organization with its own aspirations going into the democracy arena hence its members should remain compliant and obedient to the party's policy even if it conflicts with the fighting spirit of people's representatives. Yet, a political party's right to recall is not consistent with the principles of a democratic country if the reason for recalling their members in the House of Representatives (DPR) merely because their members in DPR violate the political party's Statutes and Bylaws.

Keywords: Recall, Membership, Regional House of Representatives

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INTRODUCTION

The term *recall* in the field of constitution in Indonesia is also known (in Indonesian language) as *penggantian antar waktu*. The right to recall can be terminologically defined in B.N. Marbun's *Kamus Politik* as;¹ a process of re-withdrawing or substituting a member of DPR by its parent organization, i.e. a political party. Etimologically, recall means "withdrawal". Meanwhile, a political party's right to recall means the withdrawal or in-service dismissal of a parliamentary (DPR/DPRD) member by their political party.

Under Article 239 paragraph (2) of Law Number 17 Year 2014 concerning MD3, recall is indeed something normal as an instrument/institution which can control the membership of DPR, since when one of requirements of this recall above is met, then an individual's DPR membership can be ceased during their service term. We can then imagine how would it be if this recall is abolished, a condition under which no mechanism for dismissing a person's DPR membership is available despite the wrongdoing he/she commits.

However, it poses a problem if this right to recall is given to a political party. This is because in accordance with Article 239 paragraph (2) points d, g and h of Law Number 17 Year 2014 concerning MD3, a political party may propose a recall and it is also authorized specifically by this law to dismiss its member which eventually will dismiss this individual from his/her DPR membership. Also in Article 16 paragraph (1) point d of Law Number 2 Year 2011 concerning Political Party, it is stated that a political party may recall its members for such reason as this member of theirs has violated its statutes and bylaws.² When an individual is dismissed from his/her post as a political party's members, it will then be followed by his dismissal from his/her membership in the institution of people's representatives and, more tragically, when the relevant political party's member switches to or becomes a member of another political party then he/she will be recalled from his/her DPR membership (article 16, paragraph 1, point c). From this article, a conflict of norms occurs, i.e. between the norm set forth in Article 16 paragraph (1) point c of Law Number 2 Year 2011 concerning Political Party and the norm governed in Article 28E paragraph (3) of 1945 Constitution, where it reads "Every person shall have the right to the freedom to associate, to assemble and to express opinions" thus it results in juridical consequences of private and public legal natures.²

It is these regulations which cause debates for a member of the House of Representatives assumes the position of a Parliament member under the legitimation from people's votes, rather than those of a political

¹B.N. Marbun, *kamus politik*, Penertbit Sinar Harapan, Jakarta, 1996, p. 43.

²Article 16 paragraph (1) point d of Law Number 2 Year 2011 concerning Political Party

party. Thus, the political party's right to recall its members constitutes a right which may prevent the DPR from completely voicing people's aspirations and from having the freedom to implement the people's mandates.

Many use political party's right to recall to dismiss the DPR membership of an individual who does not comply with the political party's policies. As a result, this political party's right to recall haunts and intimidates (even if it is indirectly) DPR members when they are about to voice their constituent's aspirations. This political party's right to recall becomes like a chain which restrains the DPR members' freedom to express and do what she believes as the right ones. This political party's right to recall also indicates the tendency to ignore people's will and make it hard for the people to participate politically.³

On the other hand, the existence of a political party constitutes a form of institution to express ideas, thoughts, views, and beliefs freely in a democratic community. Therefore, the existence of a political party is tightly related to the principles of freedom of expression, freedom of association, and freedom of assembly.⁴ These principles above are acknowledged and guaranteed by the 1945 Constitution of the Republic of Indonesia, explicitly governed in Article 28E paragraph (3) which reads, "Every person shall have the right to the freedom to associate, to assemble and to express opinions".⁵

What happens in Indonesia is that people have different opinions on a political party's right to recall its members in DPR. Some argue that recall is to strengthen a political party and that strengthening political party is a consequence of modern democracy development. However, after the amendment of the 1945 Constitution, nothing is mentioned that a DPR member is a political party's representative delegated by a political party's sovereignty. Therefore, when a DPR member is about to be dismissed, it should be done through the constitutional people's sovereignty. From this debate, a controversy occurs regarding the implementation of a political party's right to recall a DPR member.

Lily Chadidjah Wahid was elected a DPR member in 2009 General Election using an opened, proportional General Election system by applying voting mechanism in accordance with the provision of Article 5 paragraph (1) of Law Number 10 Year 2008 concerning 2009 General Election which states that a General Election to elect members of DPR, Provincial DPRD, and Regency/ Municipality DPRD is implemented using an opened, proportional system. The fact that Lily Chadidjah Wahid was elected has actually placed the sovereignty in people's hands in accordance with Article 1 paragraph (2) of 1945 Constitution.

A recall has been made to Lily Chadidjah Wahid by the leader of National Awakening Party or *Partai Kebangkitan Bangsa* (PKB) since she was deemed as having crossed the tolerance line and violated the party's policy. The political considerations which tend to support the government's policies suspected to be problematic have frequently become the cause for a recall made to a DPR member who was vocal and critical to these policies which were against the people's favor.⁶ A DPR member in this case seemed to be a victim due to the absurdity of legal norms and conflict of norms between Law Number 17 Year 2014 concerning People's Consultative Assembly, House of Representatives, Regional Representatives Council, and Regional House of Representatives, and Law Number 2 Year 2011 concerning Political Party which governed a right to recall for a political party.

The same applies to the case of Fahri Hamzah who was fired by the Arbitration Council or *Majelis Tahkim* of PKS on 11 March 2016 for he was deemed to have violated many regulations of the party and worsened its image. After this incident, PKS sent a letter to substitute Fahri Hamzah during the consultative meeting of House of Representative on 11/12/2017.⁷

Research Method

Doctrinal legal research is the one studying the law which is conceptualized and developed based on the doctrine followed by its conceptor or developer. It is called doctrinal legal research because this research is conducted or directed only to the written regulations or other legal materials. It is also document research or study since this research is mostly done to legal materials of secondary nature in libraries.⁸ Eventually, this research is normative as can be seen from the legal issue substance to be studied in this paper, i.e. a political party's right to recall. This is a paper which tries to review particularly legal provisions and principles as well as

³Stevanus Evan Setio, *Hak Recall Parpol Dalam Sistem Demokrasi Indonesia*, Penerbit Udayana, 2013, p. 5

⁴Hendra Nurtjahjo, *"Filsafat Demokrasi"* Penerbit PT Bumi Aksara, Cetakan Kedua, Jakarta 2006, p. 45

⁵<http://12abaya.tribunnews.com/2011/03/02/lily-effendy-di-ambang-recall>

⁶<http://nasional.kompas.com/read/2017/12/11/17304031/pks-kembali-usulkan-pencopotan-fahri-hamzah-dari-pimpinan>

⁷Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Tesis dan Disertasi*, Penerbit PT. RajaGrafindo Persada, Jakarta, 2013, p. 11.

⁸Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, edisi revisi Banyumedia Publishing, Malang, 2006, hlm 46.

the applications of rules or norms in positive law.⁹

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This is normative legal research which uses secondary data from primary, secondary and tertiary legal materials. The instrument used for collecting the legal materials is the so-called "IRAC", i.e. choosing the issues (Issues), determining the relevant legal rules (Rule), and then analyzing the facts from law perspective (Analysis), and finally drafting a conclusion (Conclusion).

RESEARCH RESULT AND DISCUSSION

Essence of Political Party's Right to Recall DPR Members

Recall has been present and formally acknowledged in Indonesia since the New Order took a reign in the government, i.e. in 1966 through Law No. 10 Year 1966 concerning the Position of Temporary People's Consultative Assembly and *Gotong Royong* House of Representatives Approaching General Election. This Law was born several months after the New Order raised to political arena, replacing the Old Order.¹⁰

The inclusion of right to recall in Law No. 10 Year 1966 was to clean the parliament (DPR-GR) members from those loyal to the Old Order led by Soekarno. This was the reason as to why this right to recall was governed in a Law, rather in the DPR-GR Rules of Procedure, considering that a Rule of Procedure was binding internally, yet a Law would bind those beyond the Political Parties or Organizations with seats in DPR-GR.¹¹

The mechanism to recall a DPR member governed in Law No. 27 Year 2009 can be done in two ways, i.e. proposed by his/her political party leader (Article 214) or by the Ethics Council of DPR (Article 215). Meanwhile, in Law No. 17 Year 2014, this shall be proposed by the relevant political party leader as governed in Article 240 and by the Representatives' Ethics Council as governed in Article 147. Law No 17 Year 2014 also provides an addition in Article 241 i.e.:

- (1) In case a political party member is dismissed by his/her political party as referred to in Article 239 paragraph (2) point d and the said member submits his/her objection to a court, his/her dismissal then would be lawful after the court passes a decision which has obtained a permanent legal force.
- (2) In case the dismissal is based on a complaint as referred to in Article 147 paragraph (2), the Representatives' Ethics Council shall deliver a report at a plenary meeting of DPR to obtain approval.
- (3) The president officially announce this dismissal as referred to in paragraph (2) at the latest 14 (fourteen) days upon the receipt of proposal for dismissing a DPR member from DPR leaders¹².

The history and development regarding the arrangement of the right to recall a DPR member in Indonesia shows dynamics in giving this right to recall to political parties. While it is true that it was initially intended to get rid of political opponents in the parliament, this right to recall is currently expected to be an effort of control from a political party to its members assuming a position as DPR members. However, in its implementation this right to recall still poses pros and cons.

After reviewing many sources on this political party's right to recall, the following result is obtained: List of DPR members who have once been recalled or nominated for a recall by the relevant political party from 1977 to 2018 as follows:

Table 1 List of DPR members to whom a recall is made or who have been nominated for recall From 1977 to 2018

No.	Year	Number	Political Party
1.	1977-1982	7 members	Partai Demokrat Indonesia (PDI)
2.	1972-1982	1 member	Partai Golongan Karya (Golkar)
3.	1982-1987	9 members	Partai Demokrat Indonesia (PDI)
4.	1982-1987	8 members	Partai Persatuan pembangunan (PPP)
5.	1992-1998	1 member	Partai Persatuan Pembangunan

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¹⁰Ni'matul Huda, Recall Anggota DPR Dan DPRD Dalam Dinamika Ketatanegaraan Indonesia, *Jurnal Mimbar Hukum* Vol. 23, No. 3, 2011, hlm 462

¹¹Ni'matul Huda, 20122, *ibid.* p. 462

¹²Law No 17 Year 2014 also gives an addition in Article 241

			(PPP)
6.	1992-1998	1 member	Partai Golongan Karya (Golkar)
7.	2004	1 member	Partai Demokrat (PD)
8.	2004	1 member	Partai Demokrasi Indonesia Perjuangan (PDIP)
9.	2004	1 member	Partai Amanat Nasional (PAN)
10.	2004-2009	1 member	Partai Bintang Reformasi (PBR)
11.	2009-2014	2 members	Partai Kebangkitan Bangsa (PKB)
12.	2009-2014	1 member	Partai Demokrat (PD)
13.	2009-2018	3 members	Partai Keadilan Sejahtera

Source: processed from many sources

There is, however, a dissenting opinion for the Constitutional Court Judge's Consideration in the Constitutional Court's Decision Number 008/PUU-IV/2006 in relation to Political Party's Right to Recall. Four Constitutional judges (Prof. Jimly Asshiddiqie, Maruarar Siahaan, Laica Marzuki, Prof. Abdul Mukhtie Fajar) argue in their dissenting opinion:

That recall causes a DPR member lose the legal acknowledgment, guarantee, protection, and certainty, as well as fair treatment in performing their constitutional duties as a DPR member, as guaranteed by the constitution under Article 28D paragraphs (1) and (2) of 1945 Constitution. Article 12 point b of Political Party Law which states "dismissed from a political party's membership for violating the statutes and bylaws" and is reaffirmed in Article 85 paragraph(1) point c of UU Susduk (Structure and Position Law) which states "members are recalled for being nominated by the relevant political party" has actually let the law of private nature (*privaatrechtelijk*) to override the public law in the constitutional matter of relationship between people's representatives, voters, and the state institution who obtain their authority from the 1945 Constitution. Even if it is not meant to negate the role of political parties in their relationship with DPR members in performing their constitutional duties, be it their functions for legislation, monitoring, budgeting and voicing the aspirations of those people voting for them, in playing these roles the political parties cannot be allowed to do anything without any restraint. The restraints identified by placing the constitutional law to play a role as a public law which also governs it should open as wide chance as possible for the people's representatives to fulfill their office oath to perform their obligations as fair as possible, by tightly upholding Pancasila and 1945 Constitution and the applicable regulations of law, to enforce democracy for the sake of national goals and interests as well as NKRI.

The role of political parties as participants of general election to vote for DPR and DPRD members as set forth in Article 22E paragraph (3) of 1945 Constitution does justify and it is constitutionally legitimate if a political party member who assumes the office of a DPR member resigns from his/her position as a member of a certain political party nominating him/her, to also submit for his/her dismissal from DPR. However, if the reason proposed by this political party submitting for recalling its member from DPR is his/her violation of its statutes and bylaws, it cannot be abruptly justified without having a due process of law in a legal mechanism which can examine the feasibility of this reason (Decision of Constitutional Court Number 008/PUU-IV/2006)¹³.

The track record of 5 (five) major political parties in Indonesia which amend their statutes and bylaws and their organizational structure and have been registered with the Ministry of Law and Human Rights of the Republic of Indonesia.

Table 2 Track Record of Statutes and Bylaws Amendment and Organizational Re-structuring of 5 Major Political Parties in Indonesia

No.	Political Party's Name	Amendment time	Year
1.	Partai Demokrasi Indonesia Perjuangan (PDIP)	3 times	2003, 2015, and 2015
2.	Partai Golongan Karya (Golkar)	1 time	2014
3.	Partai Gerakan Indonesia Raya (Gerindra)	3 times	2009, 2012, and 2013
4.	Partai Demokrat	4 times	2004, 2010, 2013 and 2015

¹³Decision of Constitutional Court Number 008/PUU-IV/2006 on Review of Law No 27 Year 2009 concerning MPR, DPR, DPD and DPRD against the 1945 Constitution of the Republic of Indonesia.

5.	Partai Keadilan Sejahtera	3 times	2007, 2011 and 2015
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Source: Directorate General of AHU Kemenkumham RI 2016

However, the reason for dismissing a DPR member shall not only be limited to violation of law, rather such reasons as his/her performance which does not consistent with the party's policies or poor performance can also make him/her be nominated for a recall by the political party. When the reason is merely violation of statutes and bylaws, then the mechanism for exercising the right to recall conflicts with the accountability principle. Meanwhile, the duties as a public official, in this case a DPR member, requires an accountability for the performance of their duties and obligations to the people. Therefore they should no longer be held accountable to their political party, rather to the people. This is because, according to the theory of people's sovereignty, the people's sovereignty in a democratic system is reflected from an expression that democracy is a government of the people, by the people, for the people¹⁴. Thus, the current DPR members are legitimately elected by the people through a general election, thus they should be held accountable to the people who have given them the legitimacy.

A political party's right to recall is a means provided by the law to recall their members who assume the position as parliamentary members. Meanwhile, it has been the parliament's job to voice the people's aspiration as indicated from the root word of parliament, i.e. *le parle*, which means to *speak* in English¹⁵. Viewed from its impacts, a political party's right to recall has negative impacts on this country's politic. The negative values which may raise include: Firstly, it can restrain and contain the critical reasoning of DPR members who wish to speak out their constituent's aspirations. Secondly, it help shape a DPR member with poor mentality, fearing their parent organization (political party) to an extreme level which further leads this DPR member to prioritize more their party's interest, rather than voicing their constituent's aspirations¹⁶.

For these and some other reasons, it can clearly be seen that a political party's right to recall will swithc people's sovereignty in political party's sovereignty. All the while the people's sovereignty in a democratic system constitutes is a government of the people, by the people, for the people. In addition to conflicting with the principles of people's sovereignty as governed by the 1945 Constitution, this political party's right to recall its members in DPR is inconsistent with one of people's sovereignty principles as stated by Hatta, i.e. the fourth principle or "culture", wherein such values as freedom to follow religion, freedom to express opinions, and freedom to pursue knowledge are contained. In this case, it has something to do with the freedom to express opinion. The right to recall can be said as have been an obstacle for DPR members to fight for people's interests in the parliament. This right to recall also haunts DPR members.

Therefore, every citizen shall be given political freedom for it is a peace of the soul which arise from the principle that each person is guaranteed for their safety. Using freedom, people can save themselves from any form of pressure, coercion, authoritarianism, dictatorship, colonialism, and the like. Franz Magnis Suseno states that freedom is our dignity's crown as human being¹⁷.

Thus, the DPR members who have been mandated by the people through a general election ought to have a space of freedom to bring the trusts they bring with them in the effort of fighting for the best interest of their constituents. While it is true that they can be elected DPR members thanks to the political means in the form of political party, it does not necessarily mean that their responsibility to the people is less than that of their political party.

The right to recall should have actually be diminished for it make the lawmakers less objective to the people due to their fear to the fraction¹⁸. The very existence of recall system has rendered many people's representatives less critical, and even too frightened to voice the people's aspirations¹⁹. Article 16 paragraph (3) of Law Number 2 Year 2011 concerning Political Party decides:

In case the dismissed political party's members are also members of the house of representatives, their dismissal from the political party membership shall be followed by their dismissal from their membership in the house of representatives in accordance with the regulations of law²⁰.

Such an attachment basically confirms that DPR members are political party's delegates who won the parliament seats in the general election process. As a political party's delegate, DPR members cannot freely

¹⁴Stevan S. Evan Setio, *Op. Cit.* p. 16

¹⁵Nike K. Rumokoy, *Kajian Yuridis Tentang Hak Recall Partai Politik Sistem Ketatanegaraan Indonesia*, Vol.20, Nomor 1, 2012, p. 5

¹⁶Nike K. Rumokoy, 2012, *Ibid.* p. 5

¹⁷Nike K. Rumokoy, 2012, *Ibid.* p. 5

¹⁸Stevan S. Evan Setio, *Loc. Cit.* p. 173

¹⁹Moh. Mahfud MD, 2003, *Demokrasi Dan Konstitusi Di Indonesia*, Rineka Cipta, Jakarta, p. 167

²⁰Article 16 paragraph (3) of Law Number 2 Year 2011 concerning Political Party

state their mind or opinion, and or take actions which are different or diverting from the stance or policy taken by the political party, even if the thought, opinion or action of DPR members is consistent with or reflects the aspirations and or interests of the people from which the relevant DPR member obtain their votes²¹.

When a political party deems its members in DPR has been different or deviating the party's policies, it can at any time substitute him/her with another "delegate"²². This way, the implementation of the state's power is determined by political parties either directly or indirectly. Moh. Hatta had once said that the right to recall conflicted with the democracy itself, especially Pancasila democracy. Any party's leaders should have no right to withdraw their members in DPR for it was a result of a general election. However, in reality some party's leaders thought they had more power than the people voting for them. If it was the case, then it was better to just abolish the general election, he suggests. Basically, this right to recall exists only in a communist and fascist state which is totalitarian in nature.

This means as long as the majority has not decided it, then any discussion of an issue should keep on going. However, when it has been agreed upon and decision has been announced, then everybody should listen, and both the supporters and the opponents of the action shall unite in accepting the accuracy of this majority's decision²³.

Jimly Asshiddiqie argues about this right to recall, stating that: In the true democratic system, a "party recall" system should have been abolished and replaced with "constituent recall" one. A DPR member cannot be dismissed from their position as a people's representative, unless if the relevant member violates the law, the code of conduct, resigns, or dies during their service term. A DPR member cannot be dismissed from their position by being withdrawn or recalled by their political party's leader for such reasons as being different from the opinions of this party's leaders or for other reasons which conflict with the principle of sovereignty of the people voting for them. Moreover, upon the decision of Constitutional Court, the appointment of a DPR member shall be done using the voting principle. Therefore, people's aspiration cannot be suppressed just because this representative of theirs have different opinions from most of the party's leaders.²⁴ Based on the foregoing, it is safe to say that a political party's right to recall its member in the parliament which is based on later violation of the party's statutes and bylaws is inconsistent with the principles of people's sovereignty under the 1945 Constitution of the Republic of Indonesia.

1 CONCLUSION

In essence, a political party's right to recall its members in the House of Representatives is intended to allow them to constantly monitor their members in the parliament as it is a political organization with its own ideas in the democracy arena in order for them to comply with and abide by the party's policies even if they are in conflict with the fighting spirit of the people's representative. This political party's right to recall its members in the parliament is inconsistent with the principle of a democratic nation, if the reasons to recall its members in the House of Representatives (DPR) is merely because this DPR member violates the party's statutes and bylaws. This is because there has been no acknowledgment and guarantee of any citizen's democratic rights, equality before the law, and protection of human rights by the 1945 Constitution of the Republic of Indonesia.

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²¹Stevanus Evan Setio, *Op. Cit.* p. 173-174

²²*Ibid.* p. 174

²³Ni'matul Huda, *Op. Cit.* p. 462

²⁴Jimly Asshiddiqie, "Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi", Jurnal Konstitusi, Vol. 3 No. 4, 2006. p. 17

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