

Political Party and People's Suffrage in Electoral Process

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Abstract:

The purpose of this research is to determine political parties' positions on people's constitutional rights from the standpoint of justice. The author focuses on the role of political parties in selecting representatives or leaders in accordance with the constitutional rights guaranteed by the constitution. The research question is: What is the position of political parties on people's constitutional rights in terms of justice? Is the fulfillment of the people's constitutional rights by the Leader elected in a General Election in accordance with the aspect of justice? As trustworthy resources, the author employs secondary data in the form of documents gathered through library research. This study highlights the positions of political parties that disregard the constitutional rights of the people, which are in conflict with the rights of the people as the owners of the right to be elected and vote.

Keywords:

constitutional rights; election; political party

I. Introduction

The State Constitution (Undang-Undang Dasar) is a form of legitimacy of people's sovereignty. In Indonesia, the sovereignty of the people is confirmed in Article 1 paragraph (2) of the 1945 Constitution which stated "Sovereignty is in the hands of the people and is carried out according to the Constitution". The constitution has a specific function, namely selecting and limiting state power, as well as claiming and protecting constitutional rights and human rights (Tibaka & Rosdian, 2017). The Indonesian constitution, which was prepared before the independence in 1945, has also contained fundamental rights of citizens, to protect human prestige in achieving goals and the general welfare of Indonesian citizens (Arimbi, 2020).

Regarding the idea of people's sovereignty in Indonesia, it was initiated long before the drafting of the 1945 Constitution. The president and vice president, Soekarno and Hatta, had put forward the ideas of popular sovereignty which contained political democracy and economic democracy (Argenti & Dias, 2018). People's sovereignty is the driving force in the government and the state which is fully controlled by the people. The people have the power to determine policies on how to regulate or govern the people. However, the decisions that become government regulations are determined based on a negotiation that is carried out in an orderly manner and open to input from all the people.

The principle of popular sovereignty gave birth to the concept of democracy in which the people are the holders of sovereignty (Lane, 2016; Suryawati, 2020). The people, as the holder of sovereignty, have the right to determine the form of government that will be implemented, such as to determine the direction the state aspires to. The 1945 Constitution clearly states that people's sovereignty is implemented based on a representation model.

Asshidiqie as cited by Avendia et al., (2020), the representation system determined by the people's sovereignty is called indirect democracy.

Based on the aforementioned, it can be seen that the 1945 Constitution contains the principles of people's sovereignty where democracy is not directly as a means of implementing state life. However, democracy is not merely seen as the participation of the people in managing state politics, but is also a means of realizing national goals and purposes. The life of the people who come from natural resources is also carried out in accordance with the principles stipulated in the 1945 Constitution. Addison et al, (2019) believe that the model of managing natural resources controls many people's lives and to maximize their prosperity.

Government is one of the conditions to create an orderly society and be able to fulfill the wishes of the people (Office of the High Commissioner for Human Rights, 2016). Simamora (2021) states that domestic politics influences the foreign policy taken by the government. As the executor of government, the state is obliged to provide comfort, welfare, access to education, health and fair and equitable participation (Azmy, 2021). However, the challenge is the arbitrariness that arises from the power possessed by the government. Therefore, the urgency of the presence of a constitution which contains the sovereign rights of the people to oversee the legislative and executive must be carried out to overcome the arbitrariness of the executive and legislative bodies. The method commonly used to realize constitutionalism is to give freedom to the people to oversee the government which is guaranteed and can be prosecuted. Moreover, the written constitution (UUD) gives rights to the people as constitutional rights that must be fulfilled by the state. However, the question arises, to what extent these rights can be realized in practice. A constitution may contain complete articles to achieve that goal, but sometimes it does not give any meaning at all.

The model of democracy through general elections (PEMILU) is considered capable of replacing the hereditary monarchy system which often gives birth to authoritarian leaders (Burhanuddin, 2017). On the other hand, elections conducted through the general election system cannot guarantee the birth of a perfect government. Basically, elections aim to choose leaders who prioritize people's interests and are able to apply democratic values.

The people with their constitutional rights are one of the democratic components who have the right to vote and are elected through participating political parties in general elections. However, the implementation of elections often uses manipulative methods such as campaigning to count votes at the polling station (TPS). This action eliminates the true meaning of democracy (Siahaan & Tampubolon, 2021).

Elections provide space for voters to determine the cadres of political parties who are participating in the election to be elected as people's representatives. These facilities generally educate the people, as the holders of the right to vote and be elected, about how the process of determining state administration should be carried out. This forum allows the people to participate in government to realize the goals of the state. This forum gives the people the right to participate in making the law, especially in the legislative process in the House of Representatives. Then, the final decision on who will hold the governmental power and how the government will be implemented is completely given to the people as the holders of power (Constitution of the Republic of Indonesia). This agreement must give equal opportunity to all citizens because they have a legitimate interest in the political process.

To fill positions through political recruitment, the role of political parties is very important because it is carried out through both direct and indirect mechanisms. Not all positions can be filled through political recruitment. Some certain positions in the government are not political recruitment or may not involve the role of political parties. In this case, political parties do not function to recruit state officials.

In addition to the recruitment function, strong political parties have a function to regulate and resolve conflicts in society (Fjelde, 2020). As mentioned earlier, the interests of the community that arise are different from one another and may collide with one another. With a large number of political parties, various public interests are accommodated by political parties that offer various understandings, plans, and policies. When a political party is no longer able to become a place for certain community groups or become a forum for elite groups, it will only be a political power without support. Those political parties are only a tool of a certain group that coincidentally wins in the election due to manipulation of the people's vote and is used to enforce certain policies for the public (Siahaan & Tampubolon, 2021). The election which was originally a democratic mechanism by the people turned into a loophole that is misused to fulfill elitist political desires that are contrary to the constitutional rights of the people.

Based on these conditions, the authors are interested in examining the position of political parties with constitutional rights in Indonesia. The author focuses on the role of political parties by selecting representatives or leaders in accordance with constitutional rights guaranteed by the Constitution. The research questions are: What is the position of political parties on the constitutional rights of the people based on the aspect of justice? Is the fulfillment of the constitutional rights of the people by the Leaders elected through General Elections in accordance with the aspect of justice? This study aims to determine the position of political parties on the constitutional rights of the people based on the aspect of justice.

II. Review of Literature

Violations of the people's constitutional rights at the time of the general election attracted the attention of previous scholars. Some experts argue that violations of people's rights by election administrators are related to unfair treatment, negligence crisis of legitimacy and integrity in the electoral process (Barkatullah, 2020; Sawasdee, 2020; Ulum, 2019; Ignazi, 2020; Fisher & Sällberg, 2020). Then the violations are systemic, structured, massive (Mahyudin, Haryanto & Marsinah, 2020; Birch, Daxecker & Höglund, 2020) and general election information tends to be manipulated and disinformation (Siahaan & Tampubolon, 2021; Sawasdee, 2020; von Borzyskowski & Kuhn, 2020). Violations of constitutional rights in general elections are carried out by political parties (Fjelde, 2020; Sawasdee, 2020) with political money to influence voting or win elections (Gutiérrez-Romero & LeBas, 2020; Virananda, Dartanto & Wijaya, 2021). The important thing is that this election process does not change the system of inequality and openness and is forbidden for democracy (Dinarto & Ng, 2020).

A recent study showed that the violation of the constitutional rights of the people by political parties because the principles of democracy and accountability of political parties were not met (Venice Commission, 2020). Other scholars such as Zarpli & Zengin (2022), ul Khaliq (2022), Syafri et al. (2020), Suraya et al. (2020), Mahmud et al. (2020) has examined the violation of the constitutional rights of the people in the general election. However, none of these authors examines the position of the people's constitutional rights by political parties in general elections. This research differs from previous research in that it focuses on research – to determine the position of the people's rights against political parties in choosing leaders in general elections.

III. Research Methods

This qualitative research analyzed the role of political parties and their relationship to the constitutional rights of the people in choosing leaders using the perspective of justice. The data used was secondary data derived from library materials collected through library research. The approach method of this research was a statutory approach and a conceptual approach.

IV. Discussion

The agenda of limiting the people's constitutional rights and human rights is not widely studied in the legal literature in Indonesia. Most people assume that human rights must be contained in the constitution. However, that is not the main problem. Human rights are fundamental because they have been obtained by humans since they were born. However, not all of these natural rights are protected by the constitution, especially in a particular country. So that the people's constitutional rights must be human rights for the people, but human rights are not necessarily included as the people's constitutional rights.

This discussion relates to the rights that are classified as constitutional rights of the people which are distinguished from the rights regulated in laws and regulations (statutory rights). Chapter XA of the 1945 Constitution contains a special section which regulates the protection of human rights. However, several laws and regulations have also been issued to contain the protection of human rights. Those are Law Number 39 of 1999 concerning Human Rights, as well as laws that ratify international conventions related to human rights, including Law Number 11 2005, Law Number 12 of 2005, Law Number 29 of 1999, Law Number 7 of 1984, Law Number 6 of 2012, and Law Number 19 of 2011.

The preparation of the 1945 Constitution was inseparable from the debate about human rights. There were two pairs with different opinions. The debate was between Hatta and Yamin with Soekarno and Soepomo. The two pairs differ on whether the basic rights of the people need to be the content of the constitution. During the Second Session of the Investigating Committee for Preparatory Work for Independence (BPUPK), Soekarno expressed his opinion which said "... completely throw away the understanding of individualism, do not include it in our Constitution which is called "rights of the citizens". In contrast, Yamin said that "... so that the rules for people's independence should be incorporated into the Constitution as broadly as possible".

Differences in views among the founding figures have given rise to the assumption that Yamin and Hatta adopted an individual liberalist view. However, this assumption is not true. Hatta and Yamin do not have a liberal view. Hatta conveyed at the BPUPK meeting that "... we must oppose individualism... We are establishing a new state on the basis of mutual cooperation and the results of joint efforts. Furthermore, Hatta is of the view "... in collectivism there is little right for collectivism members, members of the family to express their feelings to organize, make the body of collectivism the best it can be. Based on Hatta's opinion, the regulation of rights needs to be contained so that the "administrative state" that will be established does not become a state of power. Provisions regarding basic rights must be clear because an unclear arrangement regarding people's rights will lead to constitutional errors (*grondwettelijke fout*). This is not only in matters of rights concerning the people but also rights for the entire population.

During the process of amending the Constitution, the People's Consultative Assembly (MPR) which oversees the Amendment to the Basic Law (1999-2002) agreed that the regulation

on the basic rights of the people must be clearly stated in the constitution. This idea became the agenda for the amendment to the 1945 Constitution. A series of basic rights of the people were then included in a separate chapter. The inclusion of basic rights was accompanied by changes to the constitutional system with the establishment of a Constitutional Court which was designed to protect the rights of the people through the authority to review laws against the Basic Law.

The right to vote and be elected (right to vote) as a constitutional right of the people. The constitutional rights of the people are a set of rights that are agreed, regulated, and guaranteed to be fulfilled in the constitution. Therefore, the rights regulated in the 1945 Constitution of the Republic of Indonesia are referred to as people's constitutional rights.

The right to vote and to be elected (right to vote) is a constitutional right of the people even though it is not clearly stated in the 1945 Constitution or is not explicitly regulated regarding the protection of the right to vote. In addition to the constitutional rights of the people which are explicitly written in the constitution, there are also things that must be included as the obligations of the State and the obligations of the people because the rights and obligations cannot be separated. In line with this view, the people's right to vote and be elected (right to vote) is regulated in several articles of the 1945 Constitution including:

- a. Article 1 paragraph (2) states "Sovereignty is in the hands of the people and implemented according to the Constitution.";
- b. Article 2 paragraph (1) states "The People's Consultative Assembly consists of the People's Representative Council and members of the Regional Representative Council who are elected through general election and further regulated by law.";
- c. Article 6A paragraph (1) states "The president and vice president are elected in one pair directly by the people.";
- d. Article 19 paragraph (1) states "The members of the People's Representative Council are elected through general election.";
- e. Article 22C paragraph (1) states "The members of the Regional Representative Council are elected from every province through general election.";
- f. Article 27 paragraph (1) states "All citizens shall be equal before the law and in government and shall uphold the law and government without exception.";
- g. Article 28 states "Freedom of association and assembly, issue of mind with oral and written and so on is stipulated by law.";
- h. Article 28D paragraph (3) states "Every person shall be entitled to citizenship status.";
- i. Article 28E paragraph (3) states "Every person has the right to freedom of association, assembly, and expression."

As an affirmation that the position of the right to vote and be elected (right to vote) is a constitutional right of the people, we can also find it in the interpretation of the law carried out by the Constitutional Court. In the Constitutional Court Decision (2014) on the constitutionality of the rights of former members of the Indonesian Communist Party (PKI) to nominate themselves as members of the legislature, the Court stated that:

"...that the constitutional right of the people to vote and be elected (right to vote and right to be a candidate) is a right guaranteed by the constitution, laws, and international conventions. So limiting the deviation, nullification, and elimination of these rights constitutes a violation of human rights."

The right to vote and be elected (right to vote) as referred to in the statement above is in the context of the people's right to have the same opportunity to nominate themselves as members of the legislature in the election (right to be candidate). However, the Constitutional Court in its considerations also mentions the right to vote is guaranteed by the constitution. Therefore, the right to vote is immediately included in the category of the people's constitutional right. If referring to the approach to the theory of people's constitutional rights proposed by Alexy (2003), the norms of people's constitutional rights are classified into two groups, namely:

- (i) norms that are clearly stated in the text of the constitution, and
- (ii) derivative norms of the people's constitutional rights.

In line with the theoretical approach, the rights of the people which are clearly stated in the constitution said "equal opportunities in law and government". As stated in Article 27 paragraph (1) that "All citizens shall be equal before the law and in government.". Semantically, the composition is different from the Article 28D paragraph (3) of the 1945 Constitution that states "Every citizen shall have the right to obtain equal opportunities in government.". Theoretically, the constitutional rights of the people which are clearly stated in the Constitution are the right to have equal opportunities in government.

Thus, the interpretation of the constitutional court as stated in Decision 011-017/PUU-I/2003 that the right to be elected without discrimination is a derivative constitutional right of the people as stated in Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution. The same applies to the position of the right to vote.

In a different decision, the interpretation of the constitutional court emphasized the existence of the right to vote. In the decision of the case examining the constitutionality of the use of identity cards for voters who are not registered in the Permanent Voters List, the constitutional court states and affirms that "...the people's rights to vote as described above have been established as human rights and constitutional rights of the people (constitutional rights of citizens)". Therefore, the right to vote and the right to be elected are basic rights of the Indonesian people which are recognized as statutory rights by regulating them in the Act.

Indonesia applies the concept of democracy. In terms of terminology or definition, democracy is a pattern of government that actively involves all members of society in making decisions by those in authority. The most significant manifestation of democracy is the holding of general elections. Elections are an event for the community to participate in voting to elect representatives of the people, and are evidence of efforts to realize democracy.

In general, democracy is defined by experts as a system of government where all citizens have rights and obligations that are guaranteed their position and power in carrying out their lives and in running the state. The people have the right to participate in running the country or overseeing its operations either directly or through representatives who have been chosen honestly and fairly.

A political party is a public legal entity recognized by the government and consists of a group of people who are well organized with the aim of peacefully seizing or maintaining power through general elections that are held periodically. Political parties are instruments that cannot be separated from the democratic system in any country in the world. A country with democratic system must have political parties because they are a manifestation of the freedom of the people to form groups according to their interests.

Therefore, in its development, it is a universally recognized freedom which became known as the freedom of association. Without freedom of association, human dignity can decrease because a person cannot express opinions according to his/her beliefs and conscience without others opinion (OCHCR, n.d). This may have been realized by the founding fathers of the nation. They made people's sovereignty the foundation of Indonesia's constitutional system.

The sovereignty of the people has opened a very broad democracy and is the characteristic of the state administration system. The emergence of political parties is like mushrooms after the rain. Various types of political parties with various ideologies, visions, and missions grow and develop in state politics. This is what must then be regulated in a constitution.

The constitution and people's sovereignty are closely related because the essence of the constitution is a legal form of the conception of people's sovereignty. In its development, the people exercise their sovereignty through their representatives. These representatives then represent the majority of the people through political parties. Therefore, the community gives a mandate to their representatives to represent their interests in the political process and government through parliament.

A parliament contains representatives from political parties. There are three reasons that political parties are needed in the context of their own institutionalization, namely:

- a) Political parties are the center for the realization of political representation, although in some countries there is currently a DPD (Regional Representative Council) whose members are elected individually.
- b) Political parties are the main mechanism for governance. This is related to the need for support from political parties in the nomination of the president.
- c) Political parties are the main bridge for maintaining democratic accountability.

As aforementioned, it can be seen the significant role of political parties in Indonesia. Political parties are significant because they are a forum for succession of leadership and control tools from the people over all government policies through parliament which is filled by their cadres through elections that are held periodically and peacefully.

Institutional theory places the origins of political parties as the gradual expansion of suffrage and the transfiguration of parliamentary bodies. Therefore, political parties basically have a significant position (status) and role (role) in every system of people's sovereignty. Political parties can be called pillars of democracy and one of the political infrastructures because they play an important role as a liaison between the government in a country and its people.

As a pillar of democracy in building the nation and state, political parties act as institutions to fight for people's aspirations in the political process to serve as public policies. The two-party system is often considered the most ideal system because it is compatible with presidential and parliamentary systems, while multi-party systems are considered only compatible with parliamentary systems.

The winner-takes-all principle provides an opportunity for the president to claim his policy choices on behalf of the people. The separation of powers between the executive and legislative institutions in a presidential system tends to cause polarization and political instability (Aji, 2021). Therefore, it is considered not suitable to be applied in a new democracy.

In a parliamentary system, government parties are the main players on the policy agenda in parliament so they must agree for significant policy changes. If they ignore it, no changes will occur or these changes will be made by a different government. In a presidential system, the parties in the government are not the main makers of policy. This means that they may reject the draft law and their representation stays in government.

Another issue that is also important is the relationship between the parliament and the government (DPR-President). Elections with too many parties have an impact on the absence of a party that wins the general election with a significant majority of votes. It will be more difficult if the parliament is controlled by a party or coalition of parties that is different from the opposite parties that support the elected president, which tends to result in ineffective presidential government.

The question that needs to be answered is why the combination of a presidential system and a multi-party system that is practiced in Indonesia does not encourage an effective and stable government? The author does not want to state that the system of government has a direct correlation to the effectiveness of government because there is evidence that both systems of government are able to create effective government. Although there is no direct relationship between the government system and the effectiveness of the government, there are several things in the presidential system that affect the effectiveness of the government.

V. Conclusion

The position of political parties towards the constitutional rights of the people is as a means of political communication. The party plays a significant role in efforts to articulate the interests or political interests of the people. The fulfillment of the people's constitutional rights by elected leaders through general elections has not been in accordance with the aspect of justice. This happened because of the ineffectiveness of the government due to the weak management of support from coalitions of political parties that support the government and the inability of the president to communicate and lobby the politics with parliament. Political parties need to increase the political participation of their members and the people in the context of organizing political and government activities. They also have to fight for the ideals of political parties, especially in choosing leaders fairly for the continuation of the life of the people, nation, and state. Further research is needed to determine the function of political parties in choosing leaders in accordance with the people's interest through elections based on Indonesia's democracy.

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