

**RECONSTRUCTING THE INSTITUTIONALIZATION OF  
POLITICAL PARTIES IN THE STATE OF LAW AND DEMOCRACY**

**Imam Choirul Miuttaqin**  
**Badan Pembinaan Hukum Nasional**  
e-mail. [Choirulimam144@gmail.com](mailto:Choirulimam144@gmail.com)

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**ABSTRACT**

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*One of the functions of political parties is political recruitment. In this function, political parties are an institution for the selection process in the context of filling public or political positions. As the main actor in democracy, democracy should start from within the party itself based on true participation from its members. What is meant is that the function of political recruitment and supplier of public positions (legislative and executive) must be based on a mechanism based on participation and deliberation of its members (internal democracy of political parties). The method used in this research is normative juridical law research method. Internal democracy is not only the contestation for the election of general chairman or political party administrators in congresses, conferences and the like, but also the phenomenon of well-known legislative candidates such as artists, rich people or media bosses and the like can result in jumping into political office through parties. Strengthening the institutionalization of political parties is carried out in at least four ways, namely first, conditioning the formation of a simple multiparty system, second, encouraging the creation of democratic and accountable party institutionalization, third, conditioning the formation of democratic and accountable party leadership and fourth encouraging the strengthening of the party base and structure in community level.*

**Keywords:** *Reconstructing, Political Parties, Democracy*

**Journal History**

Received	: November 20, 2023;
Reviewed	: November 27, 2023;
Accepted	: November 28, 2023;
Published	: November 30, 2023;

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**INTRODUCTION**

Political party institutionalization is placing political parties in an ideal function, both internal and external, agreed upon by the prevailing political system. With this kind of understanding, in fact the phrase institutionalizing political parties or strengthening the institutionalization of political parties is not very appropriate. All political parties must work in an institutionalized pattern. The problem is whether the institution is ideal or not ideal. The most appropriate thing to do is to create an ideal institutional pattern according to democracy.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

Adopting the views of Mainwaring and Torcal, the challenges faced by political parties in new democratic countries, including Indonesia, are a matter of stable habituation of values and procedures into internal party democracy. However, this is not easy to do because of the style of leadership emerging politics tends to lead to personalization of figures, including central figures who control political parties. When the political system and party system crystallize in the personality of the figure then Party organizations will tend to follow where elite interests flow. Political parties are elite instruments so they are not autonomous. Likewise, the electoral network will be subject to *individual leader interests*. The party relies more on a network of figures rather than the strength of the party organization and the existence of clientelism within the party.<sup>1</sup>

Political parties have a very important position (status) and role in every democratic system. Parties play a very strategic liaison role between government processes and citizens. In fact, many argue that political parties are what actually determine democracy, as Schattscheider (1942) said, "*Political parties created democracy*". Therefore, parties are a very important pillar to strengthen the degree of *institutionalization* in a democratic political system<sup>2</sup>. The process of institutionalizing democracy is essentially determined by the institutionalization of political party organizations as an inseparable part of the democratic system itself. Therefore, according to Yves Meny and Andrew Knapp, "*A democratic system without political parties or with a single party is impossible or at any rate hard to imagine*".<sup>3</sup>

Although there are still many critical and even skeptical views towards political parties. The most serious view of them states that political parties are actually nothing more than political vehicles for a group of ruling elites or intend to satisfy their own "lust" for power. This public skepticism should be a reflection as evidence that the function and regulation of political parties in regulation still has problems. The views above encourage the need for engineering party regulations which have implications for strengthening the internal democratization system of political parties. This party regulation is urgent carried out in response to the impasse of political party functions.

Parties, elections and parliament procedurally and substantially work to channel the voices and aspirations of the people in the form of political decisions made by public officials. In this context, elections are currently believed to be the only and most democratic way to elect public officials. It is believed that the electoral mechanism can protect the people's voice and minimize the possibility of oligarchic rulers with unlimited power. The above views encourage the need to strengthen the institutionalization of political parties through regulatory changes which have implications for strengthening internal democracy in political parties. The big question is how this regulatory engineering can be carried out and how it is

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<sup>1</sup> Mainwaring; Torcal. Party system institutionalization and party system theory after the third wave of democratization dalam Katz dan Crotty. 2006. p. 204

<sup>2</sup> Jimly Asshidiqi. Pengantar Ilmu Hukum Tata Negar Jilid II, Sekretariat Jenderal Mahkamah Konstitusi RI. Jakarta, 2006. p. 153

<sup>3</sup>Ibid p . 156

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

engineered, this article will try to provide alternative legal ratios on how and where to strengthen the institutionalization of political parties.

## METHOD

The method used in this research is normative juridical law research method. Normative juridical research that uses a statute approach by examining various legal rules<sup>4</sup>.

## DISCUSSION

### Conceptualization of Political Parties as Legal Entities

In legal science, a legal subject *is* every bearer or bearer of rights and obligations in traffic or legal relations. The bearer of these rights and obligations can be a person who is also called a *natuurlijke person* (menselijk person) or a non-person who is also usually called a *rechtsperson*. This *rechtsperson* is what is usually called and known as a legal entity which is a *persona ficta* or a person created by law as a *persona* (fictitious person).<sup>5</sup> Legal entities can be recognized as legal subjects as *rechtspersoon* or *menselijke personon* which is the opposite and at the same time a counterpart to the concept of a person as a legal subject or natural person. Because as legal subjects both natural persons and *rechtspersons* are basically the same, then do they both have the same ability to carry out all types of legal acts? The answer is of course no. A legal entity does not have a will of its own, it can only carry out actions through capable people (natural persons) who are its administrators. The administrator does not work for himself or at least not solely for himself, but for and on behalf of the legal entity. Because legal entities have specificities compared to the legal subjects of ordinary people (*natuurlijke personon*), not all legal acts can be carried out by legal entities. This means that legal entities cannot receive all types of rights and carry out all obligations like ordinary humans (*natuurlijke personon*).<sup>6</sup>

The provisions of Law Number 2 of 2008 as amended by Law Number 2 of 2011 (UU Political Parties) state that political parties are organizations that are national in nature and are formed by a group of Indonesian citizens voluntarily on the basis of the same will and ideals to fight for and defending the political interests of members, society, nation and state, as well as maintaining the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. This understanding was born from an understanding of the existence of political parties as an embodiment of citizens' right to associate based on beliefs and interests. Politics is an important means of implementing democratic state life.

This understanding gives two different characters to political parties, namely as private legal entities if seen from the fact that their founders are individual citizens, and also as having the character of public legal entities if we look at the area and types of activities

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<sup>4</sup> Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

<sup>5</sup> Titik Triwulan Tutik, *Hukum Perdata dalam Sistem Hukum Indonesia* (Prenada Media 2008) 40.

<sup>6</sup> Lihat Jimly Asshidiqi dalam buku *Perihal Undang-Undang*. p.140

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

carried out by political parties. However, because the existence of political parties is needed as an instrument of the state, with certain exclusive rights and authorities that bridge political infrastructure and superstructure (the right to participate in elections, recruit prospective members of representative institutions and candidates for President and Vice President, as well as Regional Heads), then political parties are actually public legal entity. Its character as a public legal entity becomes stronger when political parties carry out some of the functions of the State, including conducting political education, and for these activities receive budget allocations from the State. In fact, constitutionally political parties can be called constitutional organs because they have certain rights and authorities regulated by the 1945 Constitution.

One of the consequences of a political party's status as a public legal entity is the state's right to make regulations and supervise political parties. This State authority actually also exists in other forms of legal entity as a consequence of the State's status as *a total legal order* which grants legal entity status (legal person) to political parties in order to comply with the framework of state life. Of course, forms of regulation and supervision must be carried out proportionally so that political parties can continue to carry out their functions within the framework of democratic state life, rather than transforming into state parties which are contrary to democracy itself.

In this case, the State has the authority to make regulations that require political parties to implement certain provisions that guarantee internal democratization of political parties. Apart from that, the regulation of political parties must also lead to the Indonesian constitutional design contained in the 1945 Constitution, especially towards the formation of a simple multiparty system that is in line with the presidential system of government.

### **Reconstruction of Political Party Institutions and the Doctrine of *Militant Democracy***

The position of the AD/ART of political parties is not included in the hierarchy of statutory regulations, but this does not simply mean that the AD/ART of political parties is legislation that regulates and contains all matters regarding the political party based on Article 2 paragraph (4) of Law no. 2/2011. As is known theoretically, laws are the product of joint agreement between the President and the DPR. Where in general a law only contains a framework and outline of important policies that function as parameters. Meanwhile, more technical and operational matters will be outlined further in the regulatory instruments below. AD/ART was formed as an order from the Law as regulated in Article 2 paragraph (3), paragraph (4) and Article 5 of Law no. 2/2011.<sup>7</sup>

Based on the perspective of legislative theory, the delegation of power or authority from law makers to other institutions to further regulate the content of a particular law is called delegation of the rule making power. Forms of delegation in Law no. 2/2011 regarding the AD/ART of Political Parties as contained in Article 15 paragraph (1) which reads, "The

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<sup>7</sup>Hera Alvina Satriawan, Kedudukan Ad/Art Partai Politik Dalam Hierarki Peraturan Perundang-Undangan Terkait Kewenangan Uji Materil Oleh Mahkamah Agung <https://jurnal.untagsby.ac.id/index.php/bonumcommune/article/view/5849> [accessed 10 November 2023]

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

sovereignty of Political Parties is in the hands of the members which is implemented according to the AD and ART". Article 22 states, "Political Party Management at every level is elected democratically through deliberation in accordance with the AD and ART. Article 29 paragraph (1a) which regulates the political party recruitment process is carried out through democratic cadre selection in accordance with the AD and ART. Article 30 states that, "Political Parties have the authority to form and establish Political Party regulations and/or decisions based on the AD and ART and do not conflict with statutory regulations. Article 32 paragraph (1) states, "Political Party Disputes are resolved by internal Political Parties as regulated in the AD and ART. Even a member of a political party has his membership removed from the political party if he violates the party's AD and ART.<sup>8</sup>

One thing that is a common phenomenon is that the main leader of a very powerful political party with a complete monopoly on political and economic funds and access becomes a kind of "political middleman" *between* the interests of certain parties and public policy makers. This is what Jimly Asshiddiqie is worried about, namely that political parties tend to be oligarchic. Organizations, including political party organizations, sometimes act loudly for and on behalf of the interests of the people, but in reality on the ground they actually fight for the interests of their own administrators.<sup>9</sup>

In this relationship between political parties and oligarchic nature, Robert Michels states that:

*Organization implies the tendency to oligarchy. In every organization, whether it be a political party, a professional union, or any other association of the kind, the aristocratic tendency manifests itself very clearly. The mechanism of the organization, while conferring a solidity of structure, induces serious changes in the organized mass, completely inverting the respective position of the leaders and the led. As a result of organization, every party or professional union becomes divided into a minority of directors and a majority of directed.*<sup>10</sup>

The regulation of political parties is one of the main trends in modern democratic countries considering the increasingly important role of political parties. Political party regulation is necessary to create a party system that is appropriate to the type of democracy being developed and the conditions of the Indonesian nation. Regulations regarding political parties are also intended to guarantee the freedom of the political parties themselves, as well as limit excessive interference from the government which can stifle the freedom and role of political parties as one of the institutions needed to implement popular sovereignty. On the

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<sup>8</sup> Jamaludin Ghafur, 'Menguji AD/ART Parpol Di Mahkamah Agung', <https://law.uji.ac.id/blog/2021/09/29/menguji-ad-art-parpol-di-mahkamah-agung/>, 2023 [accessed 10 November 2023]

<sup>9</sup> Jimly Asshiddiqie, "Dinamika Partai Politik dan Demokrasi, <jimly.com/makalah/namafile/22/DINAMIKA\_PARTAI\_POLITIK.doc.>, diakses pada 10 November 2023.

<sup>10</sup> Oscar Grusky and George A. Miller, *The Sociology of Organizations: Basic Studies*, (New York: Free Press, 1970), p. 33.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

other hand, regulations are also needed to ensure the functioning of democracy within the organization and activities of the political party itself. The regulation of political parties is part of the institutionalization process to develop democracy. The regulations are intended to create regularity in competition between parties, increase the breadth of political parties' roots in society, increase public acceptance of the results of general elections, and improve the internal organization of political parties.

The doctrine of Militant Democracy is a doctrine introduced by Karl Loewenstein.<sup>11</sup> For Loewenstein, the basic idea of militant democracy is to weaponize democracy so that it can defend itself, "*Democracy stands for fundamental rights, for fair play for all opinions, for free speech, assembly, press. How could it address itself to curtailing these without destroying the very basis of its existence and justification ?*".<sup>12</sup> Likewise with the constitution as the highest law, "*constitutions are dynamic to the extent that they allow for peaceful change by regular methods, but they have to be stiffened and hardened when confronted by movements intent upon their destruction*".<sup>13</sup>

This doctrine contains the principle that the state not only has the right but also has an obligation to ensure the preservation of democracy. Based on this principle, the state is obliged to act when certain organizations threaten democracy, because the loss of democracy will automatically eliminate human rights. This doctrine can be used as a framework for state regulation of political parties in Indonesia. Political parties as instruments of democracy should have a democratic character because only then can political parties support the process of maturation and preservation of democracy in Indonesia.<sup>14</sup> On the other hand, when political parties are not internally democratic, this will certainly reduce the quality of democracy in state administration.

Some "chronic diseases" of political parties that need to be anticipated through regulation and supervision include:

1. The tendency for oligaschic patrimonial relations within political party elites;
2. Internal money politics of political parties;
3. Internal conflict resolution is not carried out through internal regulatory mechanisms.

In this case, the State has the authority to make regulations that require political parties to implement certain provisions that guarantee internal democratization of political parties. Apart from that, the regulation of political parties must also lead to the Indonesian constitutional design contained in the 1945 Constitution, especially towards the formation of a simple multiparty system that is in line with the presidential system of government.

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<sup>11</sup> Karl Loewenstein, "Militant Democracy and Fundamental Rights I", *The American Political Science Review*, Vol. 31, No. 3, 1937, hal. 417-432; dan Karl Loewenstein, "Militant Democracy and Fundamental Rights II", *The American Political Science Review*, Vol. 31, No. 4, 1937, hal. 638-658.

<sup>12</sup> *ibid.*, Karl Loewenstein, "Militant Democracy and Fundamental Rights I", p. 431

<sup>13</sup> *Ibid.*, p. 432

<sup>14</sup> Look Donalt P Kommers, 1989, *The Constitutional Jurisprudence of the Federal Republic of Germany*, Durham and London: Duke University Press, p. 202.

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

Therefore, Asshiddiqie believes that to overcome oligarchy in political parties, several supporting mechanisms are needed, such as an internal mechanism that guarantees democratization through the participation of political party members themselves in the decision-making process. It is very important that regulations regarding this matter be formulated in writing in the articles of association and bylaws of the political party concerned which is traditionally within the framework of the *rule of law*. In addition to the articles of association and bylaws, in accordance with development demands, it is also necessary to introduce a positive ethical code system outlined as a *code of ethics* which is guaranteed to be enforced through an effective honorary council. In this way, in the internal dynamics of the party organization, three documents apply at once, namely *the code of law* contained in the constitution of the political party, *the code of conduct* ( *code of organizational good conduct* ) contained in the bylaws, and *code of ethics* in a separate document. Thus, legal norms, moral norms and ethical norms are expected to function effectively in building the internal culture of each political party. The rules outlined on paper are also actually enforced in practice, so that the principles of the *rule of law* and *the rule of ethics* can be truly realized, starting from internal political parties as a source of state leadership cadres.<sup>15</sup>

Party Political as pillar democracy need arranged And perfected For realize system democratic politics \_ To use support system effective presidency . \_ Structuring And improvement Party Political directed on two matter main , namely , **First** , form attitude And behavior Party Patterned politics \_ or systemic so that formed culture supportive politics \_ principles base system democracy . This thing showed with attitude And behavior Party Politics has \_ system selection And recruitment adequate membership \_ as well as develop system cadre formation And leadership strong politics . \_ **Second** , maximize function Party Political Good function Party Political to country nor function Party Political to people through education political And cadre formation as well as recruitment effective politics \_ For produce cadres candidate leaders who have abilities in the field politics . Effort For strengthen And make it effective system presidential , at least done on four matter that is First , conditioning formation system multiparty simple , second , push creation institutionalization democratic party \_ And accountable , third , conditioning formation leadership democratic party \_ And accountable And fourth push base strengthening and structure party on level society .

Strengthening the institutionalization of political parties can be carried out through the regulation of political parties by the state and can also be viewed from the existence and status of political parties as legal entities. A political party as an organization, like other organizations formed based on freedom of association, has its existence in legal traffic only recognized if it is a legal entity. According to Kelsen, several people are said to form an organization with a legal entity or corporation, if their actions are regulated by an order, namely a system of norms. Political parties as legal entities also have constitutions which

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<sup>15</sup> Asshiddiqie , *loc. cit.*

ISSN (Print) 2723-3413 - ISSN (Online) 2722-3663

DOI: 10.30596/nomoi.v4i2.17362

contain important rules for the party. From the perspective of its establishment, political parties founded by individuals can be seen as private legal entities. However, the establishment of political parties is for purposes of interests that are not private or civil in nature, but are related to political issues and the interests of the people at large. Therefore, political parties can be called public legal entities. On the other hand, political parties can be involved in civil law traffic such as buying and selling or renting.<sup>16</sup>

Some material on the provisions of the future political party law in 'forcing' the institutionalization of democratic political parties, including :

1. Political parties are obliged to hold the highest forum with the agenda of discussing AD ART and changing management at least once every five years.
2. Carrying out political party activities, at least through the annual National Working Meeting.
3. Determine the requirements for the general chairman of a political party.
4. Determines the limits on whether a person can serve as general chairman of a political party, for example a maximum of 2 terms.
5. Determine the minimum structure that exists in the management of political parties, including the existence of a Party Court or other name that has the authority to decide internal disputes.
6. Political party funding arrangements and accountability.

## CONCLUSION

Strengthening the institutionalization of political parties is carried out in at least four ways, namely first, conditioning the formation of a simple multiparty system, second, encouraging the creation of democratic and accountable party institutionalization, third, conditioning the formation of democratic and accountable party leadership and fourth encouraging the strengthening of the party base and structure in community level.

To overcome oligarchy in political parties, several supporting mechanisms are needed, such as an internal mechanism that guarantees democratization through the participation of political party members themselves in the decision-making process. It is very important for regulations regarding this matter to be formulated in the content of the law within the framework of *the rule of law* . The main things that should be regulated in future regulatory norms in the context of structuring and perfecting Political Parties in Indonesia are the requirements for the formation of Political Parties, the requirements for Political Party management including position limits in management , changes to AD and ART, recruitment and political education, management of party finances. politics and independence of Political Parties.

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<sup>16</sup> Mohammad Ali Safa, at. Pembubaran Partai Politik: Pengaturan dan Praktek Pembubaran Partai Politik Dalam Pergulatan Republik (Jakarta: Rajawali Press. 2011, p. 22-23

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