

**POLITICAL AND LEGAL PHILOSOPHICAL FRAMEWORK
FOR NOTARY PUBLIC POSITIONS AS AN ALTERNATIVE
FOR DISPUTE RESOLUTION IN INTERNAL POLITICAL
PARTY DISPUTES****Imam Choirul Muttaqin****Pusat Perencanaan Hukum Nasional Badan Pembinaan Hukum Nasional
(BPHN)**E-mail: Choirulimam144@gmail.com

ABSTRACT

Political and legal arrangements for mechanisms for resolving internal political parties' disputes have not been effective even though the arrangements have been in place and have changed several times since the beginning of reform until now . In recent years, it can be said that the ideal role and function of political parties is not as ideal. Prolonged internal conflict in several political parties , as public organizational entities Conflict or dispute resolution is an inherent part of political parties. This means that the basic principle of dispute resolution is to minimize state mechanisms (administration and justice). In this research the author uses a normative juridical approach which departs from the reality of resolving internal political party conflicts so far, thus producing ideas by trying to offer alternative dispute resolution by viewing political parties as legal entities which in legal traffic always have a Notary who always accompanies the deed product. . Philosophically, notaries in exercising their authority are in the realm of evidence, thus, notaries with their deeds become the first filter or front guard in the selection process for 'validity' or validation of the truth of the highest forum as outlined in the deed or its copy as a 'prerequisite' for truth.

Keywords: *Disputes; Political parties; Philosophical; Notary.***Journal History**

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INTRODUCTION

In legal science, a legal subject *is every bearer or bearer of rights and obligations in traffic or legal relations . with rechtsperson . This R echtsperson is what is usually referred to and known as a legal entity which is a persona ficta or a*

person created by law as a persona (fictitious person).¹ A set of norms regulates how an organization is run and the behavior of its members. By therefore, Kelsen states that a legal entity is a partial legal order *within* the entire legal system (*total legal order*) that forms the state. The relationship between *the total legal order* and the legal entity as a legal person is the relationship between two legal orders, namely the partial legal order and the total legal order, between state law and *corporation by-laws*. *The total legal order* that forms the state determines only the material elements of the act and leaves the personal elements to the task of the *partial legal order* that forms the legal entity.²

It is these rules that determine individuals as organs that must carry out actions by which the obligations and rights of legal entities are carried out. As a legal person, in a narrow and technical sense, the body's organs are recognized as *persons* and can legally represent the organization. This is only possible if state law gives it the status of a legal *entity personality*).³ Thus, the existence of political parties as a type of legal entity is determined by state law. Apart from these elements, there are also formal requirements, namely registration so as to obtain status as a legal entity, without registration, legal entity status will not be obtained, which means it has not been recognized as a separate legal subject.

Political parties (political parties) as an organization, like other organizations that are formed based on legal traffic, are only recognized if they are in the form of legal entities and in their journey political parties are often even faced with internal disputes or disputes. Political parties as legal entities apparently give rise to complex problems with various legal consequences, both from the requirements for establishment, functions, rights and obligations, evaluation, up to dissolution. Political parties as legal entities The public certainly requires special regulations because it is different from private legal entities, and in reality the existing laws and regulations still leave problems and further explanations.

In practice, political party leadership succession contestation is a clear illustration of 'real' political party disputes because often the contestation process results in one party's dissatisfaction with the results of the highest political party forum such as the National Conference, Congress, Muktamar or other names. Indeed, making changes through the highest forum is limited to the juridical basis as regulated in the provisions of Article 5 paragraph (2) of Law No. 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties which states that changes to the Articles of Association/Bylaws (AD/ART) must go through the highest political party forum. At this stage of change, it often has the

¹ Jimly Asshidiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Penerbit Konstitusi Press, 2006), Pg. 69-70

² Jimly Ashidiqi dan M Ali Syafaat *Teori Hans Kelsen tentang Hukum, Sekretariat Mahkamah Konstitusi RI*, Tahun 2006, , p. 88

³ Ibid, page 90

effect of internal disputes, usually the conflicting parties will compete quickly with each other to register the changes they have made to the Minister of Law and Human Rights of the Republic of Indonesia for approval.

In the midst of the race to obtain the legal results of the highest forum that is valid before the law, of course there are legal requirements that must be met, namely a copy of the notarial deed containing the results of the highest forum for political party decision makers, meaning that the notary is the first gate to assess the truth and early detection of whether the highest forum is. is truly appropriate and there is no indication of any rejection or internal dispute within the party, meaning that in carrying out its authority the Notary is not only concerned with the administrative realm but also assesses substantive justice.

In this article the author will focus on the practice of resolving political party disputes internally by looking at the perspective of political parties as legal entities where in the process of establishing changes to both management and AD/ART are outlined in a notarial deed . There are two things that are highlighted in this article, firstly, the regulatory practice or legal politics of regulating political party disputes and the mechanism for resolving disputes internal results produced in the highest political party forum. Second, Philosophical Framework for the Authority of the Notary's Office in carrying out its Authority in the Legality of Political Party Changes.

METHOD

Research on the problem was carried out using a normative juridical approach. This method is carried out through literature studies which examine secondary data, in the form of Legislation or other legal documents, and the results of research, studies and other references related to the problems identified.

The approach used in this legal research is a historical-philosophical approach by examining the background of what is being studied and the development of regulations regarding the issue at hand. Such research is needed by researchers when research wants to reveal the philosophy and thought patterns that gave birth to something being studied. This historical approach is necessary if researchers consider that the philosophical disclosures and thought patterns when something studied was born have relevance to the present.⁴

DISCUSSION

Legal Political Practices for Resolving Political Party Disputes

National legal politics, which is usually referred to as "*legal policy*", is the official line (policy) regarding laws that will be implemented either by making new

⁴Mahsudi, *Konstruksi Hukum & Respons Masyarakat Terhadap Sertifikasi Produk Halal, Studi Sosio-legal Terhadap Lembaga Pengkajian Pangan, Obat-obatan, dan Kosmetika Majelis Ulama Indonesia*, Pustaka Pelajar, Yogyakarta, 2015 p. 134-135.

laws or replacing old laws, in order to achieve state goals.⁵In another opinion, Padmo Wahyono stated in Imam Syaukani and A. Ahsin Tohari that legal politics is a major policy that determines the direction, form and content of the law that will be formed.⁶Post-reform political party regulations in the history of regulations related to resolving political party disputes are different, this can be seen from the content of each law on political parties that has been in force as follows:

Firstly, Law Number 2 of 1999 concerning Political Parties was passed on February 1 1999, which was the first law that was formed at the start of the reform era. This law regulates its establishment and existence in the life of the nation and state in a newly emerging democratic atmosphere which gives political figures the opportunity to establish political parties based on specified conditions. The regulatory material related to resolving disputes or disputes is not regulated in detail and technically, but the political and legal instruments chosen in resolving disputes are monitoring and sanction mechanisms where the sanctions given are in the form of freezing management up to technical dissolution. This authority is carried out by the Supreme Court judicial institution.⁷This means that the mechanism for resolving internal political party disputes is not yet known.

Second, law No. 31 In 2002 regarding Political Parties which revoked the previous Law on Political Parties where in this law there were many changes including regulations related to resolving political party disputes, the first change that was seen was the change in the phrase 'dispute' where the phrase used to refer to disputes was 'dispute'. This can be seen in the provisions Article 16 refers to internal party disputes as "political party matters", as stated in Article 16 as follows:

- (1) *Political party cases relating to the provisions of this law are submitted through the district court.*
- (2) *District court decisions are decisions of the first and final level, and can only be appealed to the Supreme Court.*
- (3) *Cases as intended in paragraph (1) are resolved by the district court within a maximum of 60 (sixty) days and by the Supreme Court within a maximum of 30 (thirty) days.*

The body of the provisions does not specify what types of political party cases can be filed through the District Court. In the explanation of Article 16 of Law Number 31 of 2002, it is only explained that "As long as it is not specifically regulated in

⁵ Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi*, Rajawali Pers, Jakarta, 2010, p. 22.

⁶ Iman Syaukani dan A Ahsin Thohari, *Dasar-dasar Politik Hukum, RajaGrafindo Persada, Jakarta*, 2010, p. 26.

⁷ Lihat ketentuan Pasal 16, 17, 18 dan 19 Undang-Undang Nomor 2 Tahun 1999 tentang Partai Politik. Lembaran Negara Republik Indonesia tahun 1999 Nomor 22 dan Tambahan Lembaran Negara Republik Indonesia Nomor 3809

this law, the procedures for resolving political party cases are carried out according to the applicable procedural law . " This means that any problem that arises is related to political parties the material of which is regulated by law No 31 of 2002, such as the formation, membership, management and finances of political parties, the resolution is carried out through the District Court with a decision of the first and final level, and can only be submitted for cassation to the Supreme Court .

Third , law no 2 of 2008, Legal politics for resolving political party disputes, there were changes in the mechanism for resolving political party disputes , including changes in the etymological aspect of the term "political party cases" being replaced with the term "political party disputes". The change in terms is also accompanied by emphasizing the boundaries or types of political party disputes, this can be seen in the Elucidation of Article 32 paragraph (1) which states that : What is meant by "Political Party dispute" includes, among others: (1) disputes relating to management; (2) violation of the rights of Political Party members; (3) dismissal without clear reasons; (4) abuse of authority; (5) financial accountability; and/or (6) objections to Political Party decisions.

In addition to regulating party disputes or disputes more clearly , Law No 2 of 2008 also opens up space for resolving political party disputes outside of court through party reconciliation, mediation or arbitration. In full, Article 32 of Law Number 2 of 2008 states as follows:

- (1) Political party disputes are resolved by deliberation and consensus*
- (2) In the event that consensus deliberation as intended in paragraph (1) is not achieved, the resolution of the Political Party dispute shall be reached through court or outside court.*
- (3) Settlement of disputes outside of court as referred to in paragraph (2) can be carried out through political party reconciliation, mediation or arbitration, the mechanisms of which are regulated in the AD and ART.*

The changes in regulations related to the aspects of the political party dispute resolution mechanism above indicate a change in the paradigm for resolving political party disputes, from resolution by the court to resolution by the court and outside the court. In this way, parties are given space to resolve internal disputes themselves through reconciliation, mediation or arbitration. In this context, resolving internal disputes through extrajudicial mechanisms is completely left to each political party to regulate it in their respective AD and ART.

Fourth , Law Number 2 of 2011, this law is an amendment to Law Number 2 of 2008 . Changes to political party dispute resolution occur in the procedures or stages of the settlement mechanism which places internal mechanisms as the initial mechanism for resolving disputes. Meanwhile, the District Court can only play a role when internal mechanisms cannot resolve disputes or disputes. B superior or

categories of political party disputes that can be resolved using the same mechanism, where changes related to dispute resolution only relate to out-of-court settlement mechanisms.⁸

Furthermore, changes to the internal settlement mechanism, which was initially carried out through reconciliation, mediation or arbitration, became a settlement by the Political Party Court. This means that the Party Court is introduced as an internal dispute resolution institution that must be established by each party. This can be seen in Article 32 of Law Number 2 of 2011 which is stated as follows:

- (1) *Political Party disputes are resolved by internal Political Parties as regulated in the AD and ART.*
- (2) *Settlement of internal political party disputes as referred to in paragraph (1) is carried out by a Political Party Court or other designation established by the Political Party.*
- (3) *The composition of the Political Party Court or other designation as intended in paragraph (2) is conveyed by the Political Party Leadership to the Ministry.*
- (4) *Settlement of internal political party disputes as intended in paragraph (2) must be resolved no later than 60 (sixty) days.*
- (5) *The decision of the Political Party Court or other designation is final and internally binding in cases of disputes relating to management.*

Article 33

- (1) *In the event that the dispute resolution as intended in Article 32 is not achieved, the dispute resolution shall be carried out through the district court.*
- (2) *District court decisions are decisions of the first and final level, and can only be appealed to the Supreme Court.*
- (3) *The case as referred to in paragraph (1) is resolved by the district court no later than 60 (sixty) days after the lawsuit is registered at the district court clerk's office and by the Supreme Court.*

The above regulation contains contradictions, even though Article 32 states that the decision of the Political Party Court is final and internally binding, it still opens up the possibility of legal action before the District Court and Supreme Court. Looking at the norms contained in Articles 32 and 33 and their explanations, it can be interpreted that what is meant by internal political party

⁸Lihat penjelasan Pasal 32 Undang-undang nomor 2 Tahun 2011 Tentang Perubahan undang-undang nomor 2 tahun 2008 tentang Partai Politik Lembaran Negara Republik Indonesia Tahun 2011 Nomor 8 Tambahan Lemnbaran Negara Nomor 5189

dispute resolution is the resolution of political party disputes carried out by the Political Party Court or other designation, while external political party dispute resolution is the resolution of political party disputes carried out by institutions or devices outside political parties .

Currently there are 76 legal entity political parties registered with the Ministry of Law and Human Rights with details of 44 political parties in its management structure it has a Party Court and 32 does not have one. ⁹Where in general, of the 44 Legal Entity Parties that have a Party Court, structurally the Party Court is located in under the leadership of the general chairman , it means that the Party Court is subordinate to the general chairman of the political party, because s structure of the Party Court These are selected and appointed by the general chairman . Seeing this phenomenon is impossible The Political Party Court can be transformed into a judicial institution or fair judge in internal political party disputes.

In its implementation, during the period from 2017 to February 2024, it was recorded that there were still relatively many disputes and/or disputes over legal entity political parties that were election participants or had never been election participants, namely:

2017

No.	Party Name	Case Number	Information
1.	Indonesian Justice and Unity Party (PKPI)	Case Number 256/G/2016/PTUN-JKT	Case between the Indonesian Justice and Unity Party (Plaintiff) and the Minister of Law and Human Rights (Defendant)
2.	United Development Party (PPP)	Case Number 617/Pdt.Sus-Parpol/2016/PN.JKT-Pst	The case between Masdin (Plaintiff) and the Minister of Law and Human Rights (Defendant) regarding PPP
3.	Indonesian Justice and Unity Party (PKPI)	Case Number 308/G/2016/PTUN.JKT	Case between the DPP of the Indonesian Justice and Unity Party (Plaintiff) against the Minister of Law and Human Rights (Defendant)
4.	Indonesian Justice and Unity Party (PKPI)	Case Number 256/G/2016/PTUN.JKT	Case between the DPN of the Indonesian Justice and Unity Party (Plaintiff) against the Minister of Law

⁹ Data processed from the Direktorat Jendral Administrasi Hukum Umum Kementerian Hukum dan HAM

			and Human Rights (Defendant)
5.	People's Conscience Party (HANURA)	Case Number 56/G/2017/PTUN.JKT	The case between Oktasari Sabil (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Hanura Party
6.	United Development Party (PPP)	Case Number 217/G/2014/PTUN.JKT	The case between Djan Faridz (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the United Development Party
7.	United Development Party (PPP)	Case Number 161/G/2014/PTUN.JKT	United Development Party Case . Khaeruddin, SE, DKK Against the General Election Commission (KPU) of the Republic of Indonesia

2018

No		Case Number	Information
1.	People's Conscience Party (HANURA)	Case Number 24/G/2018/PTUN.JKT	The case between Daryatmo and Syarifudin Suding (Plaintiff) against the Minister of Law and Human Rights (Defendant) regarding the HANURA Party
2.	People's Conscience Party (HANURA)	Case Number 12/P/FP/PEN PP/2018/PTUN.JKT	Positive Fictitious Case between the DPP of the HANURA Party (Petitioner) and the Minister of Law and Human Rights (Respondent)
3.	United Development Party (PPP)	Case Number 8/P/FP/PEN PP/2018/PTUN.JKT	Positive Fictitious Case between the DPP of the United Development Party (Petitioner) and the Minister of Law and Human Rights (Respondent)
4.	United Development Party (PPP)	Case Number 97/G/2016/PTUN.JKT	Case between DPP PPP (Plaintiff) and Minister of Law and Human Rights (Defendant)

5.	People's Conscience Party (HANURA)	Case Number 567/Pdt.G/2018/PN Jkt.Central	Unlawful Act Case between Sarifuddin Suding (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Hanura Party
6.	People's Conscience Party (HANURA)	Case Number 744/Pdt.G/2018/PN Jkt.Sel	The case between Daryatmo (Plaintiff) and the Minister of Law and Human Rights (Defendant) is related to the Hanura Party
7.	Work Party	Case Number 161/G/2017/PTUN.JKT	The case between Nurul Chandrasari (Plaintiff) and the Minister of Law and Human Rights (Defendant) regarding the Berkarya Party
8.	Indonesian Our Homeland Party	Case Number 222/G/2017/PTUN-JKT	Case between the Indonesian Our Fatherland Party (Plaintiff) and the Minister of Law and Human Rights (Defendant)

2019

No		Case Number	Information
1.	People's Conscience Party (HANURA)	Case Number 24/G/2018/PTUN.JKT	The case between Daryatmo and Syarifudin Suding (Plaintiff) against the Minister of Law and Human Rights (Defendant) regarding the HANURA Party
2.	People's Conscience Party (HANURA)	Case Number 567/Pdt.G/2018/PN Jkt.Central.	Unlawful Act Case between Sarifuddin Suding (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Hanura Party
3.	People's Conscience Party (HANURA)	Case Number 744/Pdt.G/2018/PN Jkt.Sel	The case between Daryatmo (Plaintiff) and the Minister of Law and Human Rights (Defendant) is related to the Hanura Party

2020

No		Case Number	Information
1.	Work Party	Case Number 162/G/2020/PTUN.JKT	The case between Dato KRA.DR. Yudi Relawanto, SH, MBA, (Plaintiff) and Minister of Law

			and Human Rights (Defendant) related to the Berkarya Party
2.	Work Party	Case Number 182/G/2020/PTUN.JKT	The case between Hutomo Mandala Putra and Priyo Budi Santoso (Plaintiff) against the Minister of Law and Human Rights (Defendant) regarding the Berkarya Party
3.	Work Party	Case Number Case Number 188/G/2020/PTUN.JKT	The case between Hutomo Mandala Putra (Plaintiff) and the Minister of Law and Human Rights (Defendant) is related to the Berkarya Party
4.	Work Party	Case Number 678/Pdt.Sus.Parpol/2020/PN. JKT. Sel	Case between Dato' KRA.DR.Yudi Relawanto, SH, MBA (Plaintiff) against the Minister of Law and Human Rights (Defendant) regarding the Berkarya Party
5.	Work Party	Case Number 185/G/2020/PTUN.JKT	The case between the Berkarya Party Central Leadership Council represented by H. Hutomo Mandala Putra against the Minister of Law and Human Rights (Defendant) regarding the Hanura Party

2021

No		Case Number	Information
1.	Democratic party	Case Number 150/G/2021/PTUN.JKT.	The case between Moeldoko and Jhonny Allen (Plaintiff) and the Minister of Law and Human Rights (Defendant) regarding the Democratic Party
2.	Democratic party	Case Number 154/G/2021/PTUN.JKT	The case between Ajrin Duwila, Yosef Benediktus Badeoda and Hasyim Husein (Plaintiff) against the Minister of Law and Human Rights (Defendant) regarding the Democratic Party
3.	Democratic party	Material Review Application Case Number: 39 P/HUM/2021	The case between Yusril Ihza Mahendra and the Minister of Law and Human Rights

2022

NO		CASE NUMBER	INFORMATION
1.	Work Party	Case Number 419/G/2022/PTUN.JKT	The case between Syamsu Djalal (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Berkarya Party
2.	Work Party	Case Number 279/G/2022/PTUN.JKT	The case between Taty Suhartaty (Plaintiff) and the Minister of Law and HAM (Defendant) related to the Berkarya Party
3.	Democratic party	Case Number 35/B/2022/PT.TUN.JKT	Appeal level case between Moeldoko and Jhonny Allen (Petitioner) and the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
4.	Democratic party	Case Number 39/B/2022/PT.TUN.JKT	Appeal level case between Ajrin Duwila, Yosef Benediktus Badeoda and Hasyim Husein (Petitioner) against the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
5.	Democratic party	Cassation Case Number 487/K/TUN/2022	The case between Moeldoko and Jhonny Allen (Petitioner) and the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
6.	Democratic party	Cassation Case Number 488/K/TUN/2022	Case between Ajrin Duwila, Yosef Benediktus Badeoda and Hasyim Husein (Petitioner) against the Minister of Law and Human Rights (Respondent) regarding the Democratic Party

2023

NO		CASE NUMBER	INFORMATION
1.	Democratic party	Case for Judicial Review of Cassation Case Number 487/K/TUN/2022	The case between Moeldoko and Jhonny Allen (Petitioner) and the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
2.	Work Party	Case Number 279/G/2022/PTUN.JKT	The case between Taty Suhartaty (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Berkarya Party
3.	Democratic party	Case Number 35/B/2022/PT.TUN.JKT	The appeal level case between Moeldoko and Jhonny Allen (Petitioner) and the Minister of Law

			and Human Rights (Respondent) is related Democratic party
4.	Democratic party	Case Number 39/B/2022/PT.TUN.JKT	Appeal level case between Ajrin Duwila, Yosef Benediktus Badeoda and Hasyim Husein (Petitioner) against the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
5.	Democratic party	Cassation Case Number 487/K/TUN/2022	Case between Moeldoko and Jhonny Allen (Petitioner) and the Minister of Law and Human Rights (Respondent) regarding the Democratic Party
6.	Democratic party	Cassation Case Number 488/K/TUN/2022	Case between Ajrin Duwila, Yosef Benediktus Badeoda and Hasyim Husein (Petitioner) against the Minister of Law and Human Rights (Respondent) is related to the Democratic Party
7.	Work Party	Case Number 29/Pdt.Sus. political parties/2023	The case between Syamsu Djalal (Plaintiff) and the Minister Law and human rights related to the Berkarya Party
8.	Work Party	Case Number 41/G/2023/PTUN.JKT	The case between Akhmad Goesra (Plaintiff) and the Minister of Law and Human Rights (Defendant) regarding the Berkarya Party
9.	Democratic party	Case Number 64/Pdt.G/2023/pn.jkt.sel.	The case between Najib Al Falaq (Plaintiff) and the Minister Law and Human Rights (Defendant) related to the Democratic Party
10.	Work Party	Case Number 442/G/2022/PTUN.JKT	The case between Syamsu Djalal (Plaintiff) and the Minister of Law and Human Rights (Defendant) related to the Berkarya Party
11.	United Development Party (PPP)	Case Number 306/G/2023/PTUN.JKT	Joko Purwanto (PPP) case against the Minister of Law and Human Rights, the lawsuit was withdrawn.
12.	United Development Party (PPP)	Case Number 381/G/2023/PTUN.JKT.	Joko Purwanto (PPP) case against the Minister of Law and Human Rights
13.	Work Party	Case Number 419/G/2022/PTUN.JKT.	Syamsu Djalal and Exitamara Rumzi's case against the Minister of Law and Human Rights (Berkarya

			Party)
14.	Work Party	Case Number 442/G/2022/PTUN.JKT.	Syamsu Djalal (Berkarya Party) case against the Minister of Law and Human Rights
15.	Work Party	Case Number 834/Pdt.G/2023/PN.JKT.Sel	PMH Syamsu Djalal's lawsuit against the Minister of Law and Human Rights, et al
16.	Democratic party	Case for Judicial Review of Case Number 128/PK/TUN/2023	Moeldoko and Jhonny Allen's state administration case against the Minister of Law and Human Rights

2024

No		CASE NUMBER	INFORMATION
1.	United Development Party (PPP)	Appeal Case regarding Case Number 381/G/2023/PTUN.JKT.	Joko Purwanto (PPP) case against the Minister of Law and Human Rights
2.	Work Party	Case Number 1217/Pdt.Sus/2023/PN.Jkt.Sel.	The case between Major General TNI (Ret.) Dr. Syamsu Djalal SH, MH (Berkarya Party) against the Minister of Law and Human Rights
3.	Indonesian Justice and Unity Party (PKPI)	Case Number 48/G/2024/PTUN.JKT	State administration lawsuit case between the National Leadership Council of the Justice and Unity Party against the Minister of Law and Human Rights

Based on the data, it can be seen that many political parties resolve their disputes directly using judicial instruments, either through the District Court or State Administrative Court, in fact these two judicial channels are often chosen simultaneously or alternately in the same case as part of the strategy and negating the role and function of the Party Mahlamh as ' The first adjudicating institution in the mechanism or stages of resolving political party disputes.

Legal and Political Philosophical Framework of Notary's Authority in Resolving Internal Political Party Disputes

Theoretically , the regulatory relations of political parties by the state can be based on the basis of collective action (*gesam-akt*) which underlies 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.

The involvement of a notary in every political party change can be philosophically interpreted as a form or role of a notary as a public official who has the authority to make authentic deeds. The philosophical framework of an authentic deed made by a notary will provide and guarantee legal certainty where the notary's position is actually an important part of the Indonesian state and adheres to legal principles in accordance with Article 1 paragraph (3) of the 1945 Constitution.¹⁰

The authority framework, in public law according to Henc Van Maarseven as quoted by Philipus M. Hadjon, authority consists of at least three components, namely:

1. Influence component, namely that the use of authority is intended to control the behavior of legal subjects;
2. The legal basis component, that the authority must always be able to be assigned a legal basis; And
3. The legal conformity component means the existence of standards of authority, both general standards (all types of authority) and specific standards (for certain types of authority).¹¹

In English literature, authority or authority is called *authority* or *competence*, while in Dutch it is called *gezag* or *bevoegdheid*. The Big Indonesian Dictionary defines the words authority and authority as having the same meaning, but the terms of these words are separated.

Authority means:

- a. The right and power to act; authority.
- b. The power to make decisions, command, and delegate responsibility to others.
- c. Functions that can be carried out.

Authority means:

- a. Authorized rights;
- b. The right and power you have to do something.¹²

Sadjjono stated that authority is a very important and initial part of administrative law because the government (administration) can only carry out its functions on the basis of the authority it obtains. This means that the validity of government actions is based on the authority regulated in statutory regulations. The term authority cannot be equated with the term *bevoegdheid* in

¹⁰Undang-Undang Republik Indonesia Pasal 1 ayat (3) Undang-Undang Dasar 1945.

¹¹Ridwan HR Dalam Nomensen Sinamo. 2015. *Hukum Administrasi Negara*. Jakarta: Jala Permata Aksara.

¹²*Ibid.*, p. 238.

Dutch legal decisions because these two terms have fundamental differences in terms of their character. Based on its character, *bevoegdheid* is used in the concept of public law and private law, while authority only applies in the concept of public law.¹³

SF Marbun states that authority means the ability to carry out a public legal action or juridically it is the ability to act given by the applicable law to carry out legal relations. Thus, according to him, governmental authority has the characteristics of, among other things, *express implied*, clear aims and objectives, bound to a certain time, subject to written and unwritten legal boundaries, and the content of authority can be general (abstract) and concrete.¹⁴

Yoyoh Rohaniah and Efriza formulated the definition of authority which can be seen from four things, namely:

- a. Legitimate power (legitimacy).
- b. Person who has authority.
- c. Authority is no longer seen as power but further as rights. This right is obtained by a person after recognition from society.
- d. Authority is special power, in this case formal power.¹⁵

The system of relationships within authority is patterned in the sense that it is institutionalized through regulations and within which the existence of power or authority is determined. Authority is also a core concept in constitutional law and state administrative law because authority contains rights and obligations, even in constitutional law, authority is described as legal power (*rechtskracht*), meaning that only legitimate actions (based on authority) have power. law (*rechtskracht*).¹⁶

In connection with legal power, there are two things that need to be explained, namely related to the validity (legitimacy) of government actions and legal power. These two things are interrelated. "Legitimate" is an opinion or statement about something about government action, while legal authority is something that concerns its work (environment and influence). A government act is valid if it can be accepted as part of the legal order, and a government act has legal authority if it can influence legal relations. This authority can influence legal relations after it is firmly stated that the authority is valid, only then does the government's action receive the power of law.¹⁷

Theoretically, legal power is divided into two, namely formal legal power and material legal power. Formal legal power (*formele rechtskracht*) is

¹³Nomensen Sinamo, *Op. Cit.*, p. 97.

¹⁴*Ibid.*, p. 97-98.

¹⁵*Ibid.*, p. 240.

¹⁶Nomensen Sinamo, *Op. Cit.*, p. 98.

¹⁷*Loc. Cit.*

the influence that arises as a result of a decision. Meanwhile, material legal authority (*materiele rechtskracht*) is a decision that cannot be disputed by a legal instrument. ¹⁸Regarding power and authority, Bagir Manan stated that authority in legal language is not the same as power (*machts*). Power only describes the right to do or not do. In law, authority simultaneously means rights and obligations (*rechten en plichten*). In a rule of law, government authority comes from applicable laws and regulations.¹⁹

Diungkapkan oleh Soedarto, politik hukum sebagai kebijakan dari Negara melalui badan-badan Negara yang berwenang untuk menetapkan peraturan yang dikehendaki, yang diperkirakan akan digunakan untuk mengekspresikan apa yang dikandung dalam masyarakat.²⁰

Furthermore, the concept of authority by a notary must be interpreted within a philosophical framework outlined in the considerations considering letter a of Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notaries (UUJN) which states that the essence of legal certainty, Legal order and legal protection are truth and justice. That is the main reason why the state holds the position of notary, not only to guarantee legal certainty, but more than that, it is for truth and justice. Furthermore, Article 15 paragraph (1) UUJN states that notaries have the authority to make authentic deeds of all actions, agreements and provisions required by law and/or which required by interested parties to be stated in a deed or excluded from other offices or persons determined by law.²¹

In the course of the notary's function, it is not limited to making authentic deeds but with philosophical, sociological and juridical grounds and reasons, the notary can detect the possibility of bad faith and undesirable consequences and protect parties with weak socio-economic and juridical positions thereby protecting third parties who have good intentions. . The notary guarantees the skills and authority of the parties to carry out legal actions in the deed they make.

With the framework of thinking that political party disputes can be resolved internally, from practice so far there has been an important but 'alienated' role, namely the function of the notary who has the authority to issue deeds or copies of deeds, where the copy of the notarial deed is a prerequisite for the principal to obtain approval or legality of the changes. Optimizing the notary's authority can be realized in the form of early detection, meaning that the

¹⁸ *Loc. Cit.*

¹⁹Jawade Hafidz Arsyad, *Korupsi dalam Perspektif HAN (Hukum Administrasi Negara)*, Jakarta: Sinar Grafika, 2013, p. 70.

²⁰ Anita, Politik Hukum Dalam Penegakan Hukum di Indonesia, "*DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*", Vol 2 No. 1 (2022).

²¹Undang-Undang Republik Indonesia Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris.

notary is permitted or authorized not to issue or is willing to make a deed, which requires a proof mechanism *as an early warning system*. indications of political party disputes where the norms of notary authority can be operational.

In the exercise of authority, notaries are within the scope of the law of evidence for the sake of preventive justice determining the necessity for certain legal acts to be carried out with authentic deeds. Within the framework of legal certainty, the authority of a notary that can also be optimized is the notary's function as a mediator in the framework of dispute mediation or even further as an arbitrator in the arbitration process for resolving political party disputes.

Alternative resolution of disputes or disputes through non-litigation, or perhaps better known as alternative dispute resolution or *alternative dispute resolution* (ADR) in the dispute resolution mechanism is no longer used, this function has been institutionally introduced in the Political Party Court where the position and status of the Party Court This is based on the spirit to: first, maintain the party's autonomy as an organization formed based on agreement and common interests; second, confirmation of the institutionalization of conflict within the party over all processes and dynamics within the party; third, providing quick legal certainty for resolving party problems. This means that the mediation authority of the Political Party Court does not fade or disappear. The political party court can also act as a mediator for the disputing parties, namely before the main examination of the case, and it is not the practice of judicial procedures that the judge always offers to make peace to the parties and if a peace is reached, this is stated in the decision.

Judicial Power Law, in Chapter XII, Articles 58 to Article 61 also regulates Dispute Resolution Outside of Court. Civil dispute resolution can be done outside of court through arbitration and other alternative dispute resolution. Even though arbitration is not included as an actor of judicial power as intended in Article 18 of the Judicial Power Law, the existence and authority of arbitration to resolve disputes is expressly recognized. Arbitration has functions like a judicial institution.²²

In certain cases, arbitration has a correlation with judicial institutions, especially district courts, which, among other things, involve: adjudicating requests for the right to deny the arbitrator; appoint an arbitrator; adjudicating requests for annulment of arbitration awards, accepting registration of national arbitration awards, implementing national arbitration awards, granting or rejecting recognition and implementation of international arbitration awards in the jurisdiction of the Republic of Indonesia. These matters are then regulated in

²² Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman Lembaran Negara Republik Indonesia Tahun 2009 Nomor 157 Tambahan Lembaran Negara Nomor 5076

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.²³

Arbitration and Alternative Dispute Resolution is an institution for resolving disputes outside of court based on the agreement of the parties by excluding dispute resolution through litigation in court. One alternative in resolving this dispute is mediation.²⁴

This non-litigation settlement pattern is juridically rooted in a framework of thinking that places the position of political parties as legal entities with the changes that follow. In this way, the resolution of political party disputes is not taken out at all, but is completed by political parties through alternative dispute resolution (conciliation, mediation or arbitration) internal to the political party itself .

CONCLUSION

In the course of regulating political parties after the reform era during the period from 1999 to 2011, political party laws were issued four times, both new laws and changes, in terms of content, the pattern of resolving political party disputes in the practice of polarized regulation in two possible forms of legal channels. taken to resolve internal conflicts that occur. In Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 Regarding Political Parties (UU 2/2011) it can be seen how political party disputes should be resolved, especially internal disputes .

With the framework of thinking that political party disputes can be resolved internally, from practice so far there is an important but 'forgotten' role, namely the function of a notary who has the authority to issue deeds or copies of deeds, where a copy of the notarial deed is a prerequisite for the principal to obtain approval or legality of the changes. Optimizing the notary's authority can be realized in the form of early detection, meaning that the notary is permitted or authorized not to issue or is not willing to make a deed when there are indications of political party disputes where the norm of authority or necessity is not to issue a deed or copy thereof.

²³ Badan Pembinaan Hukum Nasional (BPHN), "Dokumen Pembangunan Hukum Nasional Tahun 2021", (BPHN Kementerian Hukum dan HAM, 2021)p. 131.

²⁴ Randy Pradityo 'Penyelesaian Perselisihan Internal Partai Politik Secara Mufakat Dan Demokratis (Dispute Resolution Of Internal Political Parties In Consensus And Democratic)' <https://Jurnalhukumdanperadilan.Org/Index.Php/Jurnalhukumperadilan/Article/View/169/185> Diakses 07-02-2024

REFERENCES

- Anita, Politik Hukum Dalam Penegakan Hukum di Indonesia, “*DHARMASISYA: Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia*”, Vol 2 No. 1 (2022).
- Arsyad Jawade Hafidz *Korupsi dalam Perspektif HAN (Hukum Administrasi Negara)*, Jakarta: Sinar Grafika, 2013
- Badan Pembinaan Hukum Nasional (BPHN), “Dokumen Pembangunan Hukum Nasional Tahun 2021”, BPHN Kementerian Hukum dan HAM, 2021
- Iman Syaukani dan A Ahsin Thohari, *Dasar-dasar Politik Hukum*, Raja Grafindo Persada, Jakarta, 2010.
- Jawade Hafidz Arsyad, *Korupsi dalam Perspektif HAN (Hukum Administrasi Negara)*, Jakarta: Sinar Grafika, 2013
- Jimly Ashidiqi dan M Ali Syafaat ,*Teori Hans Kelsen tentang Hukum*, Sekretariat, 2006
- Jimly Asshidiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta: Penerbit Konstitusi Press, 2006
- Jurnal Hukum dan Peradilan. Randy Pradityo 'Penyelesaian Perselisihan Internal Partai Politik Secara Mufakat Dan Demokratis (Dispute Resolution Of Internal Political Parties In Consensus And Democratic)' <https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/169/185> Diakse 07-02-2024
- Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi*, Rajawali Pers, Jakarta, 2010.
- Mahsudi, *Konstruksi Hukum & Respons Masyarakat Terhadap Sertifikasi Produk Halal, Studi Sosio-legal Terhadap Lembaga Pengkajian Pangan, Obat-obatan, dan Kosmetika Majelis Ulama Indonesia*, Pustaka Pelajar, Yogyakarta, 2015
- Maria Farida Indrati, *Ilmu Perundang-Undangan, Jenis, Fungsi, Dan Materi Muatan* (Kanisius) 2011
- Nomensen Sinamo. *Hukum Administrasi Negara*. Jakarta: Jalan Permata Aksara. 2015