

# Constitutionalization of the Political Party: Impressions of Indonesia

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**Abstract.** This article aims to analyze the background that leads to the constitutionalization of political parties in Indonesia. As known, when Indonesia became an independent country in 1945, soon after the independence, political parties have appeared. However, the existence of these political parties has not been regulated in the 1945 Constitution of the Republic of Indonesia. The new situation came when there was a change in authoritarian government regime which was marked by the collapse of new order power to the democratic government regime in 1998. The Indonesian government made an amendment to the 1945 Constitution, one of which is that the new thing regulated in it was about political parties. This policy marks a shift in the assessment of political parties where previously it was more positioned as a private institution, now political parties are considered public institutions. There are at least two main objectives for the inclusion of regulations on political parties, that is to ensure that all activities of political parties do not conflict with the principles of Indonesia as a democratic state based on law, and in order to prevent negative state intervention on political parties which can violate the rights of citizens to associate, gather and express opinions.

**Keyword:** Political Parties, Constitution and Democracy

## 1. Introduction

Abraham Lincoln once said that, ‘Government of the people, by the people and for the people shall not perish from the earth’ [1]. Lincoln's opinion is certainly not a mere figment, because in fact, one of the main trends of the post-Cold War era is the increasing number of democratic governments in various countries of the world [2]. In the last century democracy has dominated the political discourse of the world society. Democracy is the concept most widely discussed and practiced by almost all countries in the world. Specifically, democracy has become a historical trend in the third millennium [3].

According to a research review, in the last century, the number of countries that are sufficient to be called democratic has increased tenfold to 100 countries. Considering this research that took place in 1996, it can be estimated that today only a handful of countries remain with a totalitarian system [4]. Today, throughout the world, democracy has become a kind of political paradigm, a view that is recognized together as a dominant view [5]. Corcoran said, Democracy has become "the world's new universal religion [6]. This happens because of the belief of people that democracy has good basic values that are universal [7].

The facts above show that for the majority of the world society today, democracy is believed to be the only source of political legitimacy so that democracy may in fact have defeated and undermined the legitimacy of power-centralistic monarchy, hereditary aristocracy,

oligarchs based on limited and narrow suffrage - and non-democratic power that once dominated the world political system.

In the Indonesian context, the 1945 Constitution prior to the amendment did not find any regulation on political parties. The inclusion of provisions regarding political parties in the Indonesian constitution only occurred when the 1945 Constitution underwent amendments that lasted from 1999 to 2002. There are at least a number of articles in the post-amendment 1945 Constitution that explicitly regulate political parties, they are: First, Article 6A paragraph (2) that reads, Each pair for President and Vice President shall be proposed prior to general elections by a political party or by a coalition of political parties contesting the general elections; Second, Article 8 paragraph (3) that reads, If during their term both the President and Vice President simultaneously pass away, resign, are impeached, or are unable to carry out their duties, the office of the presidency shall be taken up collectively by the Minister of Foreign Affairs, the Minister of Internal Affairs, the Minister of Defense. After thirty days at the latest, the People's Consultative Assembly of The Republic of Indonesia (MPR) shall convene to elect for the remainder of the term a President and a Vice President among the two pairs for Presidential and Vice Presidential candidates who were proposed by a political party or by a coalition of political parties and who came in first and second as pairs of candidates for President and Vice President in the last general election; Third, Article 22E paragraph (3) that reads, The participants in the general elections to elect the members of the Legislative Councils (DPR) and of the Regional Legislative Councils (DPRD) are political parties; and Fourth, Article 24C paragraph (1) that reads, The Constitutional Court shall have the authority to make final decisions in cases of first and last instance handling the review of laws against the Constitution, to decide on authority arguments among state institutions whose competence is enshrined in the Constitution, to decide on the dissolution of political parties, and to decide on disputes regarding general election results.

## **2. Research Methodology**

This study tries to analyze and identify the factors that underlie or encourage the Indonesian Government to include the regulation of political parties in its constitution (the 1945 Constitution of the Republic of Indonesia) after the amendment. This study utilized the normative research methodology with statutory and conceptual approach related with the constitutionalism of the political party.

## **3. Literature Review**

Along with the widespread political system of democracy adopted by many countries in the world, there is another phenomenon that emerges and goes along with it, that is, the growing popularity of the word political parties. The reason is that political parties are considered as the main support for the establishment of a democratic political system. Previously, political parties were considered as something trivial. But now, it is almost impossible to build a democratic country without the presence of political parties. In contemporary democracy, political parties have been regarded as vital political institutions for a modern democratic government organization, that is, as an effective media of political participation. Political parties have been seen as something that is needed and procedurally needed for the effective functioning of

democracy. Quoting some expert opinions, Russell J. Dalton and Steven A. Weldon explicitly wrote in their article entitled "Public Images of Political Parties: A Necessary Evil?" Published in the West European Politics Journal, as follows:

Perhaps no institution is so closely identified with the process of representative democracy as are political parties. The renowned political scientist E.E. Schattschneider penned the oft-cited conclusion that 'modern democracy is unthinkable save in terms of political parties'. Similarly, James Bryce stated 'parties are inevitable. No one has shown how representative government could be worked without them'. More recently, Giovanni Sartori wrote, 'citizens in Western democracies are represented through and by parties. This is inevitable' [8].

Even though political parties today have been considered as important organizations in the system of representative democracy, the fact is that new political parties are recognized in the constitutions of various countries precisely after the World War II. At the time before, political parties were seen as insignificant and even stigmatized as enemies of democracy itself. This, according to Ingrid Van Biezen, is caused by the belief that political parties are regarded incompatible with the normative conception of democracy in which democracy is actually a form of political participation and direct decision making by the people. Therefore, mobilization of partisan interests (by political parties) is seen as a threat to public neutrality and the common good [9].

In Europe, the earliest case of party constitutionalization occurred in Iceland in 1944, when it was formally an independent country from the Danish government. The Iceland move was then followed by Austria in 1945, Italy in 1947, and the Federal Republic of Germany in 1949 [10]. Today, the most or majority (87.5 percent) of post-war European democracies have recognized political parties in their constitution [9]. Even on the Africa continent, the constitutionalization of political parties took place. When reintroducing multiparty politics in the 1990s, most African countries decided to organize political parties in their constitutions [11].

Beside Europe and Africa, the constitutionalization of political parties also occurs in the Asian region, although information about this has not been as well documented in Europe. By examining the constitutions in 7 (seven) democracies in Southeast and East Asia, Erik Mobernd concluded that Indonesia, Mongolia, the Philippines, South Korea, Taiwan, and Timor Leste were countries that constituted political parties, while for Japan is not known [12].

#### **4. Results and Discussion**

The constitutions of western liberal democracies have traditionally paid little attention to the role of intermediary organizations such as political parties [13]. This is due to the belief that political parties are deemed incompatible with the normative conception of democracy where democracy is actually a form of political participation and direct decision making by the people. Therefore, partisan mobilization of interests is seen as a threat to public neutrality and the common good [9]. In addition, the absence of regulation of political parties in the state constitution can be explained by various factors, including the historical order in which the constitution of various countries generally precedes the emergence of political parties. The results of Richard Pildes' research concluded that newer constitutions tend to regulate political parties, whereas older constitutions do not regulate them. Therefore, less than 10% of the

constitutions in force in 1875 governed political parties, while more than 80% of the constitutions in force in 2006 governed political parties [9]. Likewise, before 1950, the right to form political parties was almost not existed. After that, the right to establish political parties became a more general phenomenon, where 60% of the constitution in force in 2000 guaranteed the right to establish political parties [10]. This constitutional codification of political parties gives an indication of the importance of the party's position in the institutional architecture of the current democratic government, as well as their relations with their citizens.

Ingrid van Biezen argued that the regulation of political parties in the constitution and other laws and regulations could be interpreted in two ways. On the one hand, political parties have been considered as important institutions in democracy, so the regulation of political parties in the constitution means that political parties have strengthened their material and ideational positions in the political system. The party's constitutional position effectively gives the party official status as part of the state. By giving them (parties) constitutional status, political parties are given explicit recognition regarding the importance of democratic institutions [14].

On the other hand, although political parties are important institutions in representative democracy, the faces and behavior of political parties in general do not reflect what they are supposed to do that is to strengthen democratic values. Most parties in various countries, no exception in Indonesia is seen negatively by most people because of corrupt behavior and abuse of authority that they often do. Parties by the majority of the public are increasingly seen as institutions that only think about their own interests and material benefits. In addition, political parties today are regarded by the public as the institutions most vulnerable to corruption, and perhaps as a consequence, they are one of the most untrusted democratic institutions. As a result, the view that is more widely accepted is that a higher level of external control and monitoring of party activities and behavior is needed to ensure that they carry out the functions and roles they carry more effectively.

Therefore, society demands the state to intervene in party management, activities and behavior. Consequently, the state has now taken a sizeable, and more legitimate, in dealing with internal and external roles of party. In general, the increase of this state intervention is divided into two categories. On the one hand, there is a significant increase in state support for political parties in the form of direct public subsidies. On the other hand, the state has substantially increased its control over party affairs through public law in order to increase the transparency of party activities and increase party accountability more generally [15]. Thus, the second meaning of regulating political parties in the constitution and various state laws and regulations is as a means of control from the government so that the party does not deviate from the function that is supposed to support the creation of a better democratic process.

The constitutionalisation of political parties that occurred in Indonesia does not seem to be much different from what happened in other countries, which is motivated by two things. First, to ensure that all activities of political parties are in accordance with democratic norms and the parties do not take actions that actually endanger the building of a democratic Indonesia based on law. Concern that political parties will carry out activities that are contrary to legal norms and democracy is certainly not making it up. The history of the party in Indonesia shows that during the old order under the leadership of former president Soekarno, there were two political parties, they are the Indonesian Social Party (PSI) and the Masyumi Party which was dissolved by the government because they were considered to be involved in a rebellion.

Therefore, to prevent the repetition of irregularities in the behavior of political parties that can threaten the integrity of the nation, Law of the Republic of Indonesia Number 2 of 2008 as amended by Law of the Republic of Indonesia Number 2 of 2011 concerning Political Parties then contains a number of provisions concerning prohibitions that must not be done by political

parties. Some of the prohibitions include: (a) political parties are prohibited from carrying out activities that are contrary to the 1945 Constitution of the Republic of Indonesia and the laws and regulations; (b) political parties are prohibited from carrying out activities that endanger the integrity and safety of the Unitary State of the Republic of Indonesia, (c) political parties are prohibited from adhering to and developing and spreading the teachings or understandings of communism / Marxism-Leninism.

Political parties violating points a and b above will be subjected to administrative sanctions in the form of a temporary suspension of the political party concerned by the district court for a maximum of 1 (one) year. If after obtaining the sanction of freezing it turns out that the political party repeats its violation, it will be subjected to sanction of dispersion. As for political parties that violate point c, the sanction is dispersion.

Second, the willing to protect political parties from government policies that seek to limit and even eliminate the right of citizens to associate and gather through the organization of political parties. In the early days of Indonesian independence, between 1945 and 1959, it was a phase in which the people were given the widest possible freedom to establish political parties. The government believed that political parties would become instruments to strengthen the unity and integrity of the nation and develop democratic values. Therefore, it was not surprising that dozens of political parties emerged and made Indonesia a country that adopted a multi-party system at the time.

However, this condition immediately began to change when former Indonesian President Soekarno issued a Presidential Decree July 5, 1959. Since then, the government began to trim down the number of political parties on the reasons that the number of political parties has given rise to endless conflicts among political parties. The number of political parties that are too many is considered to be a source of state instability so that the government adopts a policy of simplifying the party system by limiting the number of political parties, even some political parties which are deemed to be often in defiance of state policies, are subject to dispersion sanctions.

The policy of simplifying the party system continued in the next government regime in the New Order era under the leadership of former President Soeharto. Even at this time, only 3 political parties were permitted to stand, all of which are Golongan Karya, Partai Persatuan Pembangunan, and Partai Demokrasi Indonesia. The state appears so dominant to its citizens that there is almost no guarantee of adequate human rights including the right to establish political parties. So strong was state intervention on the life of political parties at that time, not only in terms of the number of parties limited to 3 parties, but the principle of the party was uniformed where parties were only allowed to adhere to the principle of Pancasila as the only principle. Aside from Pancasila, even religious values may not be used as party principles.

Reflecting on past experience in which government intervention against parties is so strong that it causes the rights of citizens to establish parties to be very restricted and even curbed, then in this reform era, the Indonesian government has made very strong legal policies to prevent state intervention on political parties so that political parties as an important instrument of democracy can be optimally protected. The intended policy is to include provisions on political parties in the constitution. Under this new legal policy, the government can no longer arbitrarily dissolve political parties because the dispersion of a party must go through a judicial institution that is the Constitutional Court.

## **5. Conclusion**

As a new democratic state, Indonesia realizes that maintaining and developing democratic values is not an easy thing. One of the efforts made by the Indonesian government to strengthen its democratic system is to include the regulation of political parties in its constitution and to update and improve the laws and regulations in the field of political parties. The aim is to provide clear guidelines for political parties on what is and is not allowed to be done so that this will prevent the activities and behavior of political parties that are not in line with democratic principles. In addition, the regulation of political parties in the Indonesian constitution is also intended to prevent negative interventions from the state that can violate citizens' freedom and constitutional rights, especially the right to associate, gather, and express opinions.

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