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RESEARCH ARTICLE

The Authority Of Constitutional Court In Dissolution Political Parties In Indonesia

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Abstract

The purpose of this research is to know the substance of authority of the Constitutional Court in dissolution the political parties in Indonesia. The problems analysis is how is the legal authority of Constitutional Court in dissolution the political parties and how is the implementation of those authority, included the ideal model of political parties dissolution trough the constitutional Court. The Research is located in Constitutional Court of Republic Indonesia. The authority of the Constitutional Court in dissolution of political parties, have analysis from the substance, whether the philosophy substance, legal theory and the normative aspect. The result of this research are described detail and systematically. Analysis of legal materials is done qualitatively and prepared in accordance with the purpose of research. The result of this research has shown that substances of the authority of Constitutional Court in dissolution the political parties in Indonesia is to enforcement the law and justice in accordance with the authority regard to the Constitution RI 1945 in order to get the legal supreme. The Constitutional Court is a guardian and interpreter of constitution in order to be able to implemented well as what people willing to and along with the purpose of democracy. The conduct mechanism of its authority in dissolution the political parties is based on the constitution on the court mechanism that based on the legal supreme principle, accountability, human rights and democracy by not put other interest into priority on top of people and state interest. The model of dissolution of those political parties in Constitutional Court is shall given basic right to the 3 elements, which are the government, legislations and people to take any act as the applicant in the dissolution of political parties. While for the legislation side and people can be recognized as the alternative applicant on it case. The Legislation and people can be an alternative applicant when the government is difficult time to act as mentioned on the law.

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Introduction

One of the authority from the Constitutional Court is to deciding the cases of political parties dissolution. On the old government era and new era, the dissolution of political parties is the authority of the government, while the number of political parties have dissolute, like Masjumi parties that have dissolute based on Keppres Number 200 year 1960 and PSI with Keppres Number 201 year 1960. As well with Communist Indonesia Parties (PKI) that have dissolute by the government based on the instruction of President number 1/3 year 1966 (M. Rusli Karim, 1993: 149). Along with the development of democracy, the state must be recognized and guarantee the right of everyone to have free organization in the political parties. So the dissolution of political parties is shall conduct

through the due process of law and not only based on the consideration politic from the government. (Lubis .M. Solly, 1975: 9).

Political party is the organization from the freedom of citizen to have association and get together that have guarantee by the Constitution (Budiardjo Miriam, 2000 : 163-164). It means that the political party have function as a place of aspiration and the right of each citizen to associate and get together. Through the political parties, so what become the value, belief, and the purpose of some citizen to get what they want with more systematically and guarantee by the law. Moreover, the freedom of association and get together must be implemented along well with the existing law. The founding, principle or view that adopted by the parties must be along well with the values that contain on the RI Constitution due to the impact of political parties dissolution.

The stipulation of political parties dissolution have found in the law of Constitutional Court as rule of law organic from the article 24 C point (1) of the RI Constitution that have not clear mentioned yet the legal impact that can be raised when a political parties is dissolute by the Constitutional Court decision. Along together with the Law number 2 year 2008 jo. Law number 2 year 2011 of the political party. While the legal impact is very important to guarantee the conduct of Constitutional Court decision in political party dissolution. Apart from that, it will be influenced to the political decision that take by the government and the matter of law that can be conduct after the dissolution of the political party. The other things that have not clear about the regulation regarding to the political parties dissolution between the position of Assembly, legislation and local legislation that come from the dissolution political parties, also how is the civil obligation that become the responsibility of the political parties. The empty law is become one of the analysis focusing in this dissertation.

Based on the things that have mentioned above, it seemed that the authority of the Constitutional Court and its implementation in living practice on the constitutional to the guard the constitution and the spirit of democracy that raised the controversial, even it is not to create the legal certain and justice in the middle of people.

Research Methods

Type of Research

The research is located in Constitutional Court RI. The authority of Constitutional Court in political parties dissolution in Indonesia, analysis from the philosophy substances, legal theory and normative aspect. Type of research is legal normative research that have analyzed the authority of Constitutional Court in political dissolution and its impact to the constitutional system in Indonesia. The research is used the philosophy approached and normative approached by seeing the legal dogmatic, legal theory and legal philosophy especially in analyzing the authority the Constitutional Court in political parties dissolution and its impact in the system of the state constitution in Indonesia legal State.

Type of Legal Material

Primary legal material, is the legal material of the rule of law and the Constitutional Court decision from many type of cases that become the competent of judge in the Constitutional Court , also the opinion of the legal scholar. While the secondary legal material is the legal material is like doctrines, legal principles and legal theories and jurisprudences. Another type is legal material tertiary is legal material like law encyclopedia, law dictionary, Indonesian dictionary, legal journal, journal of Constitutional Court and legal articles.

Sources of Legal Material

The Source of legal primary material is the law that directly collected from the original text of the law. While the doctrine of legal scholar, collected directly from the subject through interview. The source of legal secondary material, is legal principles and the doctrine of legal scholars, included the jurisprudence that collected from literary study. The legal tertiary material like law encyclopedia, dictionary law and Indonesian dictionary collected from the formal publishes and for journal and legal article collected from the regularly published or mass media.

Technique of Collecting Data and Legal Material Analysis

Legal material that is required in this research are legal primary material, legal secondary material and legal tertiary material. Legal primary material collected like rule of laws by inventory related to the problem analysis. Legal secondary material collected through literary study and also direct interview if it is possible. Legal material that collected from this research are inventory then categorized and analysis by the qualitative analysis with normative approach to descriptive interpretative.

Results

Constitutional Court is one of the judicial power, beside Supreme Court as mentioned under the article 24 point (1) and point (2) RI Constitution. It means that the Constitutional Court is legally binding to the general principle as a conductor of judicial power that have freedom, free from any other power influence in order to enforce the law and justice. According to the article 24C point (1) and point (2) the RI Constitution, the authority of Constitutional Court are :

- a) To examine the law to the Constitution RI 1945
- b) To decide the dispute of state institution authority that given by the Constitution RI
- c) To decide the dissolution of political parties.
- d) To decide the dispute of the general election result

The authority of Constitutional Court coupled with one obligation to give the decision on behalf of legislation opinion that President and/or vice President have assumed to against the law like traitor to the State, corruption, bribery and other criminal act or any other bad attitude, an/or not to fulfill the requisite as President and/or vice president as mentioned under the RI Constitution 1945.

According to the members of the Constitutional Court Judge Muhammad Alim (Before the amendment to the Constitution RI 1945, the role of judicative institution which is Supreme Court regarding to the dissolution of political parties, was only to give a consideration to the Government which was not binding. The political parties have obliged to report it to the President together with the demanding requisite. President issued the decision whether to accept or reject to recognized the political parties. While in reformation era, the dissolution of political parties is became the authority of judicial institution which is Constitutional Court. (The results of the interview, dated May 15, 2013).

So there is a different role of government and judicial institution in the processing of political parties dissolution before and after the amendment. Further more according to the Law number 2 year 2008 about the political parties as replace with the Law number 2 year 2011, have arranged with reason on political parties dissolution by the Constitutional Court. Those reason are like, the political parties have proved have the activity that against with the RI Constitution and any other regulation ; or the activity is bring the bad impact to the integrity and safety of the nation and state of Republic Indonesia.

According to the article 41 law number 2 year 2008, the political parties actually can be dissolution due to those :

- a) Dissolution it self;
- b) Get together with other political parties;
- c) Dissolution by the Constitutional Court

The dissolution by itself conduct based on the basic instrument and internal instrument of the political party. While get together with other political party can be conduct by directly together and establish new political party with new name, new emblem and one of sign from one of the political party. When the political party is get together and establish new party, it must be meet the requirement as mentioned under article 2 and 3 Law number 2 year 2011 of political party.

The authority of Constitutional Court in order to political parties dissolution have guarantee by the article 24C point (1) RI Constitution jo. article 29 point (1) Law Number 48 year 2009 of judicial power jo article 10 point (1) Law Number 24 year 2003 of the Constitutional Court. In the case of political party dissolution by the constitutional court , then the political party is the national political party. However , it doesn't mean that the local political party can not be request it dissolution to the Constitutional Court. The regulation of political party dissolution , whether for national political parties or for local political parties regulated under the Constitutional Court Regulation number 12 year 2008 of the judicial procedure in political parties dissolution. Constitutional Court regulation have bound either national or local political party. It is as mentioned under the article 1 point (3) PMK number 12 year 2008.

According to the article 40 Law number 2 year 2008 of political party, have 5 forbidden to the political party, :

- 1) To use name, emblem, picture sign that the same with the state emblem or same with the flag of the state ; or Republic Indonesia emblem, the emblem of government, name, flag, other state emblem or other international organization, name, flag, organization symbol of separate movement organization or forbidden organization; name or personal picture or have the same position or for the whole with the name, emblem or picture sign or any other sign from other political parties.
- 2) To conduct the activity that against with Constitution RI 1945 and any other regulation that could be bring worst impact due to the integrity and safety State of Republic Indonesia.

3) To receive from or either give the contribution from foreign that against to any rule of law and regulation, like money, good, service from any other parties without declared the clear identity and over limit from what determined by the law, whether receive or give the financial support from any State owner enterprise or local owner enterprise or use the faction in Parliamentary, central legislation and local legislation as the source of financial support of the political parties.

4) To establish the enterprise and/or own the holdings in the company.

5) To adopt and develop also disseminate the communist view/ Marxisme Leninisme.

Further more, according to the article 48 point (7) Law Number 2 year 2008, have two possibilities for the political parties when break the rule as mentioned under article 40 Law number 2 year 2008. Those two possibilities like the post phoned of the parties and dissolution. Specially for the dissolution purpose is part of the Constitutional Court authority, while the temporary un active political parties is become the authority of the First Court.

The infringement that impact to the dissolution of the political parties is prohibited for the political parties to conduct, like this following:

1) To conduct the activity that against with the Constitution RI 1945 and any other regulation; or

2) To Conduct the activity that cause to bring the worst impact for the integrity and safety for the nation of the Republic Indonesia.

3) The Political parties is prohibited to adopt and develop also disseminate the communist scholar/ Marxisme Leninisme.

When the political parties is proved to against the rule like to adopt and disseminate the communist scholar then the sanction will be direct to dissolution of the political parties by the constitutional Court. While if the political parties is proved to have activity against the law or have activity that will bring the worst impact to the integrity and safety nation, so the sanction will be a temporary active by the first court for 1 year. Event more when the political party have given sanction as mentioned above and still keep do the same infringement, so will be dissolution directly according to the Constitutional Court decision.

Discussion

1. The Legal Substance Of The Constitutional Court Authority

The substance of Constitutional Court authority is to law and justice enforcement in the context of legal state that hold tight into legal supreme principle (Azhary Tahir, 1995:90). It is along well with the essential of judicial power as the freedom power to enforce the law and justice. On the aspect ontological view, the constitutional court is the institution of the state that established to guard the constitution, to enforce the law and justice. The existing Constitutional Court based on the serious effort to the protection of the constitutional rights for the citizen and to enforce the constitution as "*grundnorm*" or "*highest norm*". Due to that reason, in ontologism view, the essential of Constitutional Court is an institution that have the authority in judicial for the legal enforcement purpose, to guard the democracy also to protect the Constitutional rights of the citizen.

If we seen from the epistemology view, the Constitutional Court in order to conduct its authority shall be based to the Constitution RI 1945 as the highest constitution in Republic of Indonesia. The Constitutional Court is legally binding to the RI Constitution, so in order to carry on its authority is prohibited to against the Constitution. While from ontological view, the Constitutional Court is expected to handle the cases in the constitution field, also to keep the constitution in order can be conduct well with its purposed and as the people will and that goes well with the purpose of democracy (Siahaan Maruarar, 2011: 7). The existing of Constitutional Court is purpose to the stable implementation of the government, also the correction from living constitution experienced in the past that raised the multi interpreted to the constitution. The main role of constitutional court is as a guardian and the final interpreted of constitution, the guardian of democracy also the protection of constitutional and human rights of the citizen (Asshiddiqie Jimly, 1994: 8).

To take into account, that the constitutional court decision is final and binding, that means the parties who are in conflict have no chance to take another legal effort anymore, so the decision of Constitutional Court is must be right, whether from the substances, or procedure and must be reflected to the truth values and bring the justice to the people in society. The main principle that should be based for the Constitutional Court in order to decide the case is the truth itself. The factors that be based on the take the decision is whether the constitutional court decision have meet on the truth value, that not contain any against factor and certain and justice character.

2. The Implementation of The Constitutional Court in Political Parties Dissolution

According to the article 24C point (1) Constitution RI 1945, one of the Constitutional Court authority is to adjudicate on the first level and take a decision on the case of political parties dissolution which is final decision. The authority is become debatable for some parties, due to the political parties is a pillar democracy. (Budiardjo Miriam, 2000: 163-164). Apart from that, the political party dissolution is against with the human rights principle, especially about the freedom of associate and get together, also to have expression as mentioned under article 28 Constitution RI 1945. The right to have association, get together and have the expression that clearly mentioned under the constitution, understood as the freedom of the citizen whether as individual or as a group to take any role in the state living that holding the democracy. So the existing of political party is become an important element on the establishing of the state. However, if we take a further analysis, so the article 28 of the RI Constitution must be interpreted for the whole, while under it article have mentioned that the freedom to have associate and get together, have an expression both oral and written determined by the law. It is mean that the freedom to have association and get together including to have expression must be based on the constitution and it is prohibited to against with the rule of law.

Basically, the freedom to have association and get together also to have an expression is the basic of human right from the democracy living. But it is not mean without limitation. The Constitutional Court as one of the State institution that have responsibility to guard and guarantee the democracy so not go far away from it purpose as mentioned under Pancasila and Constitution RI 1945. Article 24 C of Constitution RI 1945, from philosophy view can be understood that purpose of this regulation is the authority is not despotic in issued the decision regarding to the political party dissolution that against with the Constitution RI 1945. So it is need to examine trough the legal mechanism by the Constitutional Court, if is truth that political party have against with the constitution, so can be dissolution. It is a created of democracy, while the political party side have a chance to apply for defense, as mentioned under article 24 C point (1) Constitution RI 1945 of the authority from the Constitutional Court in order to the political parties dissolution, basically is not against with democracy. So the article 28 of Constitution RI 1945 is not against with article 24 C point (1) of Constitution RI 1945.

According to what mentioned above, can be understood, if democracy that created from the freedom of associate and get together also have an expression both oral and written must be along well with the existing law. Law must be put as the guidance on the democracy, it is part of legal supreme, while law must be more dominant and place in higher position than democracy, so democracy is shall subject to the legal provision. It legal supreme that actually based on the political parties dissolution. Further more, based on article 1 point (2) Constitution RI 1945 that have arranged the people sovereignty which is not allowed to against with the article 24 C point (1) about the political party dissolution by the constitutional Court, it is due on that regulation, even the sovereignty in people hand, but must be conduct according to the Constitution. So the political party dissolution is not against with the people sovereignty. The authority of Constitutional Court to dissolution the political party is actually the authority to take any constitutionality decision of the political party. In this case, the Constitutional Court will examine first whether its against or not with the Constitution RI 1945.

The applicant on this political party dissolution is the government that might be representative by the general attorney and /or Minister that pointed by the President. While the defendant is political party that representative by the head of the political party. The defendant is able to company by the lawyer. The applicant is at least have it identity with it lawyer if is applicable. Also must contain a description of ideology, principle, purpose, program and activity from the political party that applied to dissolution due to the assume that have against with the Constitution RI 1945. The application that submit to the Constitutional Court is deliver to the clerk of the Constitutional Court that will check the complete of the file from the applicant, in the practice, beside the file of case (*hard copy*), the applicant request to submit the file in *soft copy*. The examine that conduct by the clerk is only administrative and not substance of the applicant. Each of the applicant that applied to the Constitutional Court can be take it back whether before or while the examine process by the Constitutional Court.

The examine of the applicant conduct in the plenum that open for public and at least attended by 7 (seven) Judges of Constitution. The plenum is headed by the Head of Judge of the Constitutional Court. First plenum is early examined to check the complete and clear the material of the applicant and obliged to give an advise to the applicant to complete and/ or replace its file if it is necessary within 7 (seven) days. The plenum will determine by the head of plenum. In the plenum, the applicant and defendant will give the same opportunity to deliver their reason, both oral and written and complete by the evidence. The evidences that submit by the parties like letter, expert testimony, and other evidence.

The meeting of deliberation of judges conduct to take a decision after the plenum examined by the head of Constitutional Court of Judge. The decision is taking in the meeting deliberation of judge by deliberation and consensus. In order the deliberation not get the consensus, so will take vote and if the vote is fail to get decision

then the voice of the head will be determine. If the applicant is accepted, so the decision will stated that dissolution or cancel the legal status of the political party and order the government to abolish that political party from the list of the government within 7 (seven) days of work hour since the decision of the Constitutional Court is accepted. Furthermore, that decision will be announce in the state news within 14 Fourteen) days since the decision is accepted.

As well as the rule of law determination, whether for the political party or for the Constitutional Court, so generally, the sanction to the political party will be categorized in 3 categories, which are, administration sanction, un active sanction and dissolution sanction. While to the member of political party that have proved to against the law can be punish with criminal sanctions. The dissolution of political party have a big impact both for the member or for the political parties it self. The end of legal existence of political parties due to the dissolution, certainly influenced to the right and obligation also the property and position that and legal act that conduct before dissolution. The regulation that need to conduct the Constitutional Court decision, in this case have not clearly regulated yet. Also with the prohibited of the member of the political party to have the political activity after the dissolution. The law also have no given the clear limitation yet of any other political activity purpose and prohibition for the former member of the dissolution parties. Also is the prohibition is existed for the whole of his life or only in certain period of time.

3. The Ideal Model Of Political Party Dissolution in Constitutional Court

The fact have shown that many parties that have established the political party with purpose to reach the position in the government. The political party is seem only used as the political tool for certain member to get the top position in the government. In other side, many facts of the corruption act that conduct by the member of the political party for the interest of it party have shown that political party is seem to forget it function as a main pillar of democracy. Although the corruption is not mentioned clearly as one of the reason for the dissolution as mentioned on the article 2 PMK number 12 year 2008, but the criminal act on the corruption, generally understood as one of the activity of the political party or impact that raised by the political party is against with the Constitution RI 1945. So that's why the political party that not able to held its duty and function, must be dissolution. But the fact, it has shown that even though there are many political parties that have not able to conduct its function but there is not application to dissolution the political party regarding to its matter.

The authority given to the Constitutional Court in political party dissolution, it is expected to have more control to the attitude of the political parties. However, it is not ideal yet, due to the article 68 point (1) Law Number 24 year 2003 of the Constitutional Court., the application of the political parties dissolution only can be submit by the government. The submission of application of the political parties dissolution by the government have a difficult time, when the party is assumed to have the deviation of the ruling of the political party.

Generally, to give the legal standing or based on the right to the legislative and people to act as applicant in political party dissolution by the Constitutional Court, based on the understanding that people is holding the highest sovereignty of the State (Abdul Hakim Garuda Nusantara, 1988: 11). The government is the executive to conduct the people that representative. But if the government is not able to conduct its obligation, on behalf of the mane of nation and state interest, legislative is representative of people to take any step to create the people willingness. But if the legislative as representative of the people is not able to conduct the people mandate , so as the holder of the highest sovereignty of the state, the people can be act and take certain step along with the existing law to guarantee the ambition of the state.

Conclusion

Based on the description above, so can be concluded that the substance of the authority of the Constitutional Court in political dissolution is to enforce the law and justice according to the Constitution RI 1945. The Constitutional Court is the guard and the interpreter of the constitution in order to meet the good implementation along well with people willingness and the purpose of democracy, to handle and keep balance the power that exist in the institutions of the state so able to created the system of the check and balance, also to guard the democracy in order to achieve the national and state living. The mechanism of the implementation of the Constitutional Court authority based on the constitution on the justice court mechanism by hold on the principle of legal supreme, human rights and democracy by not put in the priority the power interest on behalf of people interest. The main indicator that be base for the constitutional court in the process of political dissolution by seeing the ideology, principle, purpose, program me and political party activity or the impact that can be raised by the activity

of the political parties that assumed that against with the Constitution RI 1945. The ideal model of political parties dissolution in Constitutional Court shall be given the right based on 3 parties, like government. Legislative and people to act as the applicant in political parties dissolution. The legislative and people parties must be seen as alternative applicant, when is the position of the government is difficult to act as mandate of the law. This idea is based on the understanding that people is the holder of the sovereignty state.

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