

Interim Dismissal of DPRD Members Who Commit Criminal Offenses

Airlangga Justitia¹, Lufsiana², Suparto Wijoyo³, Samuel Dharma Putra Nainggolan⁴

Abstract

Indonesia adheres to representative democracy within its constitutional system. This representative democracy is manifest by a general election mechanism to elect candidates who will occupy strategic position in managing the running of government. The candidate must be affiliated with a political party in participating in the general election because according to the laws and regulations the general election participants are political parties. A candidate needs a political party to take part in the general election, thus the relationship between the candidate and the political party is like superiors and subordinates with the theme of regeneration. This relationship persists until the candidate is elected as a member of the regional people's representative council (DPRD). In addition, political parties have the authority to impose inter-term termination (PAW) on their cadres who are already sitting in the regional people's representative council (DPRD) based on the terms and conditions set out in the law. This research is a legal research that uses a statutory approach and a conceptual approach to answer the legal issues contained in this research.

Keywords: *People's Representative Council (DPRD); Political Parties; Termination Between Time (PAW).*

Introduction

Laws are made for everything to run well and in harmony with human life. From a state perspective, law provides guidance in determining how the state system will run which can ultimately lead the country to its goal of statehood. To carry out state functions, it must be carried out by state instruments or institutions that function as captains in the process of achieving the state's goals. In Indonesia, the goals of the state are stated in the 4th paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia).

Based on Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that sovereignty is in the hands of the people and is implemented according to the Constitution. In its application, this sovereignty takes the form of representative sovereignty which is carried out through an election process which is carried out directly to elect representatives from the people. The filling of representative institutions is carried out through the General Election system (hereinafter referred to as Elections) which is one manifestation of the people's sovereignty.

Popular sovereignty means that the people participate, which means that participation in this political context refers to the participation of the people in various political processes. People's participation in the political process does not only mean that the people support decisions or policies outlined by their leaders, if they only support decisions or policies then it is not considered political participation, only political mobilization. So, political participation is people's involvement in all stages of policy, from decision making to decision evaluation, including the opportunity to participate in implementing decisions. In fact, if we take it further, people's participation in political constellations begins with efforts to elect their leaders

Elections are an instrument for realizing people's sovereignty which aims to form a legitimate government and a means of articulating the aspirations and interests of the people. Members of the People's Representative Council (DPR RI) and the Regional People's Representative Council (DPRD) when participating in elections will definitely come from a political party which is their supporter. This has also been regulated in Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which

¹ Post Graduate Program, Pascasarjana University of Airlangga, Surabaya..

² Faculty of Law, Hang Tuah University, Indonesia.

³ Faculty of Law, Airlangga University, Indonesia..

⁴ Faculty of Law, Airlangga University, Indonesia, Email: snainggolan43@gmail.com.

states that participants in the general election (Pemilu) to elect the People's Representative Council (DPR) and the Regional People's Representative Council (DPRD) are political parties.

All problems that exist in the implementation of the running of the state can only and must be resolved by law as the supreme commander. It is a consequence of this provision that every attitude, thought, behavior, action and policy of the state government and its residents must be based according to law in the applicable laws and regulations. The logical consequence of the implementation of a representative democratic system is that there is a distance between the state and its people as owners of sovereignty, therefore a bridge is needed that will connect the two, without guaranteeing a mechanism for people's participation in the state as a form of implementing popular sovereignty, the concept of popular sovereignty (democracy) can be emasculated and trapped in the totalitarian notion of popular sovereignty (Abbas et al., 2022).

Based on Article 239 paragraph (2) of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional People's Representative Council and the Regional Representative Council (UU 17/2014) also known as "UU MD3", recall is something that It is natural that as an instrument that functions as a control mechanism for political party members who sit in parliament, when one of the recall requirements is met, the member of parliament concerned will be able to be dismissed during their term of office. On the other hand, we can imagine that if this recall is abolished, problems will arise because there is no mechanism for terminating members of parliament and even if someone makes a mistake.

The problem is that this recall right is given to political parties. Based on Article 239 paragraph (2) Law 17/2014 Jo. Article 16 paragraph (1) of Law 2/2011, political parties can propose interim dismissals while being given special authority by law to dismiss a political party member which will result in the dismissal (dismissal) of a political party member (cadre). Political parties can also recall their cadres on the grounds that the political party members violate the political party's AD/ART. When someone is dismissed as a member of a political party, this will be followed by dismissal from membership in the people's representative institution and what is even more tragic is that if a member of the political party in question moves or becomes a member of another political party, the political party will recall their membership in 7 Interim dismissal of members of parliament also applies to Regency/City DPRD within the regional scope. The DPRD is the main person responsible for implementing decentralization, while the assistance tasks are carried out more by the DPD. Apart from general elections held for regional heads (Regents/Mayors), general elections are also held for the election of candidates for Regency/City DPRD members. The DPRD's power in the regional autonomy era was greater than during the New Order era. Through the spirit of decentralization regional development is more encouraged, but the reality speaks differently. However, DPRD members who are predicted to bring the spirit of regional change towards a better direction are not so. Just like members of the central parliament (DPR), DPRD members often prioritize their personal, group and class interests only. After explaining the background above, this legal research has 2 (two) problem formulations that will be used as legal issues in the discussion in this research as follows; Authority of Political Parties to Conduct Interim Dismissal (Recall) of DPRD Members; Interim Dismissal (Recall) of DPRD Members Who Have Been Found Guilty of Committing a Crime (Khan et al., 2018; 2019).

Research Methods

This research is legal research in normative form. Legal research is a know-how activity in legal science, not just know-how. As a know-how activity, legal research is carried out to solve the legal issues faced. This is where the ability to identify legal problems, carry out legal reasoning, analyze the problems faced and then provide solutions to these problems is needed. Referring to the definition given by Black's Law Dictionary, Legal Research is the finding and assembling of authorities that bear on a question of law. (findings and assembly of officials who are in charge of legal issues) and The field of study is concerned with the effective marshalling of authorities that bear on a question of law. (Field of study related to the effectiveness of officials responsible for legal matters). The legal research that will be carried out aims to find the truth of coherence, produce legal arguments, legal theories or new concepts, so that there are descriptions in

resolving the legal issues that have been formulated. Therefore, the type of research carried out is normative and doctrinal legal research (Khan et al., 2022).

This legal research is also a process of discovering legal rules, legal principles, and legal doctrines that can be used to answer legal issues. This research was conducted as an academic study, because academic legal research is concerned with efforts to contribute ideas to the development of legal science through the discovery of legal theories, new arguments, or even new concepts on things that are considered to be well established in legal science. Furthermore, the results achieved will provide a prescription regarding what is best and appropriate regarding the legal issues being raised (Li et., 2022; Kuo et al., 2022).

Analysis and Discussion

Authority for Interim Dismissal (Recall) by Political Parties for DPRD Members

Regarding its relationship with regional government, the principles of democracy should not be simplified only in relation to decision making and government administration that involves community participation. Democracy also does not just talk about the division or separation of power, both between state institutions at the central and regional levels, but there are a number of important things to pay attention to, namely the elements of power, the raw materials for decision making, and the pattern of relationships between the authorities and the people.

Regarding the theory of representation, Hans Kelsen stated his opinion that a government is representative because its officials are elected by the people. Because these officials are elected by the people, these officials are also responsible for the people who have elected them. If the official cannot be responsible to his voters, then he cannot be said to be a true representative. One of the important issues resulting from democracy on the Indonesian constitutional stage is the regional legislative institution known as the Regional People's Representative Council (DPRD). The DPRD issue is very urgent to discuss, especially if it is placed within the framework of the principle of checks and balances and the paradigm of division/separation of powers.

As for the DPRD, as regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, both before and after the changes, it is hoped that in running regional government it will also be based on deliberation and the importance of the DPRD is that it is an attribute of democracy in running regional government because representation is a mechanism for realizing normative ideas, that The government must be run by the will of the people represented by the people's representatives in the DPRD, so the DPRD has a central position in terms of people's sovereignty. Sovereignty is an absolute, supreme, unlimited, unstopable and without exception right to power.

A government system that adheres to the theory of popular sovereignty is that government power is held and exercised by state institutions formed from the people, by the people and for the people. The realization of popular sovereignty is by holding direct elections where the people themselves choose their existing representatives to run the country through its instruments. In this way, the people's representatives have the legitimacy and authority to act for and on behalf of the people they represent. This legitimacy from the people is a form of public acceptance and recognition of the authority of the people's representatives. The basic concept of democracy means that the people rule (government of rule by the people). United States President Abraham Lincoln (1809-1865) defined democracy as "from the people, by the people, and for the people". Democracy is defined as government or power, of the people, by the people and for the people. A country is a democratic country if it has the following principles or principles of a democratic country: a). Recognition and protection of Human Rights (HAM), b). People's participation in government; and c). Rule of law.

The right of recall or Interim Replacement (PAW) can be exercised by political parties against their members who sit as members of parliament, both at the central and regional levels. The right to recall itself cannot be separated from the existence of political parties. The existence of political parties is a form of institution as a form of free expression of ideas, thoughts, views and beliefs in a democratic society. Therefore, the existence of political parties is closely related to the principles of freedom of expression,

freedom of association and freedom of assembly). Regarding the Right to Recall, political parties cannot be separated from the existing party system in Indonesia and the coalitions that are practiced. The spirit that is built by creating the Right to Recall actually has a positive purpose, namely as a control mechanism for members of the political party itself. But then the problem is related to the party system and coalition model. By looking at the multi-party system and coalition pattern adopted by Indonesia, there are at least several arguments that can be used as a basis for the multi-party system that exists in Indonesia.

Regarding this recall, several things need to be taken into consideration as follows: First, the positive value of the recall is maintained with the multi-party and coalition system that was built as a preventive measure to anticipate political turmoil that will arise, which could possibly result in This creates political instability because if there is no recall mechanism, political party members who sit in parliament will be able to make blunders regarding agreements that have been agreed upon in a political party coalition. If the coalition model that has been built to strengthen and expedite the implementation of the program that has been prepared does not receive a positive response from members of parliament, which is caused by the "mischievous actions" of members of parliament who are part of the coalition, then it will automatically experience a deadlock.

Furthermore, secondly, one of the efforts to empower political parties is to give them the right or authority to take action to enforce discipline against their members, so that political party members can behave and act without deviating, especially in conflict with the political party's AD/ART. This means that if a political party is not given the authority to impose sanctions on members who deviate from the AD/ART or political party policies, members of the political party can act arbitrarily. Therefore recall also functions as a monitoring mechanism. At this level, recall functions to uphold the authority and integrity of political parties so that guarantees of the authority and integrity of political parties can be accommodated by granting them the right to recall.

Interim Replacement (PAW) or Recall is a loan term that has no equivalent in Indonesia. The definition of recall in Indonesia is different from the definition of recall in the United States. In the United States, the complete term Recall is "Recall Election" which is used to express the right of the voting people (constituents) to remove the people's representatives before their term of office ends. Interim Replacement (PAW) is also defined as the process of recalling members of the people's representative institutions to be dismissed and replaced with other members before the term of office of the withdrawn member ends.

There are several studies that discuss referendum recall, including research by Yanina Welp and Ana Sofia Castellanos entitled understanding the use of recall referendums: evidence from Ecuador. In this research, it was found that referendum recall in Ecuador was due to high public distrust. In Ecuador, recall referendums are very effective in controlling political irregularities from political party members in the legislative body. This is proven by the very high recall rate from 2010 to mid-2011, which reached 700 attempts to carry out a recall. However, it was also found that the practice of recalling referendums was often carried out by political opponents who lost in the previous period. This is what causes deviations in recall practices that should be carried out by the public, but because there are deviations, many recalls are proposed by political opponents.

Regarding the Recall for DPRD members themselves, in its implementation, the DPRD sometimes leaves their term of office unfinished due to temporary dismissal due to several reasons, starting from death, resignation and even being dismissed. The remaining positions held by DPRD members also result in Interim Replacements (PAW) which normatively must be carried out in accordance with the law. Article 409 Law no. 17 of 2014 Juncto Law no. 13 of 2019 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council explains that members of the district/city DPRD who undergo Interim Replacement (PAW) must basically be replaced by candidates for district/city DPRD members who get the votes the next highest rank in the ranking list of vote acquisition from the same political party and in the same electoral district.

The mechanism for the interim dismissal of Regency/City DPRD members is regulated in Article 406-407 of Law no. 17 of 2014 Juncto Law no. 13 of 2019 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council where members of the DPRD are proposed by the leadership of the political party to the leadership of the district/city DPRD with a copy to the governor, no later than 7 (seven) days from receipt proposal for dismissal to obtain official dismissal. The official dismissal by the governor is carried out no later than 14 (fourteen) days after the regent/mayor submits the proposal to dismiss the member of the district/city DPRD to the governor. Regency/city DPRD members are dismissed after the results of the investigation and verification are outlined in the decision of the district/city DPRD Honorary Board or complaints from the leadership of the regency/city DPRD, the public and/or voters, which are then reported to the plenary meeting and submitted to the leadership of the political party concerned.

Interim Dismissal (Recall) of DPRD Members Who Have Been Found Guilty of Committing a Crime

The right to recall is not a problem if a political party wants to exercise it against its members who have entered the assessment. However, it should be noted that as long as the implementation and mechanism of the right to recall are regulated clearly and firmly in the applicable legislation, besides that the right to recall must also be implemented objectively based on clear, concrete parameters and not subject to multiple interpretations. In recall (paw) this does not only talk about dismissal but can also talk about replacement

Meanwhile, Law 27/2009 (UU MD3) regulates the criteria by which the membership of DPR members can be dismissed as follows: Unable to carry out duties continuously or permanently absent as a member of the DPR for 3 (three) consecutive months without any information; Violating the oath/promise of office and the DPR code of ethics; Declared guilty based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more; Not attending plenary meetings and/or completeness meetings of the DPR which are his duties and obligations 6 (six) times in a row without valid reasons; Proposed by the political party in accordance with the provisions of the laws and regulations; No longer meets the requirements as a candidate for member of the DPRD in accordance with the provisions of laws and regulations regarding general elections; Violating the prohibitory provisions as regulated in this law; Dismissed as a member of a political party in accordance with statutory provisions; or Become a member of another political party.

Regarding the temporary dismissal of DPRD members for committing criminal acts, it is also regulated in Law 23/2014 which states that the reason DPRD members are temporarily dismissed is because: a). Being a defendant in a general criminal case which is punishable by imprisonment for a minimum of 5 (five) years; or b). Being a defendant in a special crime. The regulations regarding the Interim Dismissal (PAW) of DPRD members who commit this crime are different between Law MD3 and Law 23/2014 regarding when it is determined that DPRD members can be dismissed. The MD3 Law mandates that after a decision with permanent legal force is issued regarding imprisonment for 5 (five) years, then a member of the DPRD can be subject to PAW, however Law 23/2014 mandates that simply being threatened with a sentence of 5 (five) years for the DPRD member can already be punished. PAW, meaning that if the suspect and/or accused are still in the stage of being identified, the DPRD member can already be dismissed.

Conclusion

Interim Dismissal (PAW) or also known as Recall, is a right of political parties granted by statutory regulations. Regarding the reasons why DPRD members are subject to PAW/Recall, it has also been determined in a limited manner in the statutory regulations. One of the conditions or criteria for DPRD members to be subject to Interim Dismissal (Recall) is because they have committed a criminal act. Regarding this matter, there are differences in the formulation between the MD3 Law and Law 23/2014 regarding when a person can be subject to Interim Dismissal (Recall).

References

- Abbas, M., Jam, F. A., & Khan, T. I. (2024). Is it harmful or helpful? Examining the causes and consequences of generative AI usage among university students. *International Journal of Educational Technology in Higher Education*, 21(1), 10.
- Ahmed, I., Farooq, W., & Khan, T. I. (2021). Customers' Perceptions and their Responses to Objectives of Islamic Banks–A Three-Wave Investigation. *Asian Economic and Financial Review*, 11(1), 43. al politics and job outcomes.
- all). Kedepan perlulah untuk direvisi aturan ini supaya tidak menjadikan kebimbangan dan kebingungan dalam implementasinya.
- Anggono, Bayu Dwi, Telaah Peran Partai Politik Untuk Mewujudkan Peraturan Perundang-Undangan Yang Berdasarkan Pancasila, *Jurnal Konstitusi*, Vol. 16, No. 4, Desember 2019.
- Anom, Djatmiko, Kedudukan Lembaga Negara Sampiran Dalam Sistem Ketatanegaraan Re-publik Indonesia, *Jurnal Konstitusi P3KHAM UNS*, Vol. 1, No. 1, 2008.
- Asshidiqqie, Jimly, Partai Politik Dan Pemilihan Umum Sebagai Instrumen Demokrasi, *Jurnal Konstitusi*, Vol. 3, No. 4, 2006.
- Budiarjo, Miriam, Partisipasi dan Partai Politik Sebuah Bunga Rampai, Gramedia, Jakarta, 1981.
- Duverger, Meurice, Partai-Partai Dan Kelompok-Kelompok Kepentingan, Terj. Laila Hasyim, Bina Aksara, Jakarta, 1981.
- Evendia, Malicia, Implikasi Hak Recall Partai Politik Terhadap Sistem Kedaulatan Rakyat, *Fiat Justitia Jurnal Ilmu Hukum*, Vol. 6, No. 3, September 2012.
- Farida, Rida, Mekannisme Penggantian Antar Waktu (PAW) Anggota DPR Dan Implikasinya Dalam Konsep Perwakilan Rakyat, *Jurnal Cita Hukum*, Vol. 1, No. 2, Desember 2013.
- Fauzan, Muhammad, Hukum Pemerintahan Daerah: Kajian Tentang Hubungan Keuangan An-tara Pusat Dan Daerah, UII Press, Yogyakarta, 2006.
- Garner, Bryan A., *Black's Law Dictionary*, Seventh Edition, United States of America West Group St. Paul Minn, 2000.
- Hilmy, Muhammad Irfan, Trian Marfiansyah, Recall Referendum Sebagai Alternatif Proses Penggantian Antarwaktu Lembaga Legislatif di Indonesia, *Jurnal Volkgeist*, Vol. 4, No. 1, Juni 2021.
- Huda, Nurul, Hukum Partai Politik Dan Pemilu di Indonesia, Fokusmedia, Bandung, 2018.
- Jamil, R. A., Qayyum, U., ul Hassan, S. R., & Khan, T. I. (2023). Impact of social media influencers on consumers' well-being and purchase intention: a TikTok perspective. *European Journal of Management and Business Economics*, (ahead-of-print).
- Kelsen, Hans, *Teori Umum Tentang Hukum Dan Negara*, cetakan I, Nusamedia, Bandung, 2006.
- Khan, F. A. J. T. I., Anwar, F., Sheikh, R. A., & Kaur, S. (2012). Neuroticism and job outcomes: Mediating effects of perceived organizational politics. *African Journal of Business Management*, 6(7), 2508.
- Khan, M. T., Khan, T. I., & Khan, S. (2020). Innovation & Its Diffusion in Business: Concept, Stages & Procedural Practices. *sjesr*, 3(4), 174-186.
- Kuo, Y. K., Khan, T. I., Islam, S. U., Abdullah, F. Z., Pradana, M., & Kaewsang-On, R. (2022). Impact of green HRM practices on environmental performance: The mediating role of green innovation. *Frontiers in Psychology*, 13, 916723.
- Kuo, Y. K., Khan, T. I., Islam, S. U., Abdullah, F. Z., Pradana, M., & Kaewsang-On, R. (2022). Impact of green HRM practices on environmental performance: The mediating role of green innovation. *Frontiers in Psychology*, 13, 916723.
- Li, H. X., Hassan, K., Malik, H. A., Anuar, M. M., Khan, T. I., & Yaacob, M. R. (2022). Impulsive and compulsive buying tendencies and consumer resistance to digital innovations: the moderating role of perceived threat of COVID-19. *Frontiers in Psychology*, 13, 912051.
- Marzuki, Peter Mahmud, 2005, *Penelitian Hukum*, Kencana Prenada Media, Jakarta.
- MD, Moh Mahfud, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, LP3ES, 2007.
- Mushtaq, R., Jabeen, R., Begum, S., Khan, A., & Khan, T. (2021). Expanded job scope model and turnover intentions: A moderated mediation model of Core-Self Evaluation and job involvement. *Management Science Letters*, 11(5), 1473-1480.
- Peter Mahmud Marzuki, 2002, *Penelitian Hukum*, *Yuridika: Jurnal Ilmu Hukum*, Vol. 16, No. 2, Fakultas Hukum Universitas Airlangga, Surabaya.
- Rumokoy, Nike K., *Kajian Yuridis Tentang Hak Recall Partai Politik Dalam Sistem Keta-tanegaraan Indonesia*, *Jurnal Hukum Unsrat*, Vol. 20, No. 1, Januari-Maret, 2012.
- Sarwat, N., Ali, R., & Khan, T. I. (2021). Challenging, hindering job demands and psychological well-being: The mediating role of stress-related presenteeism. *Research Journal of Social Sciences and Economics Review*, 2(1), 135-143.
- Soehino, *Ilmu Negara*, Liberty, Yogyakarta, 2008.
- Surbakti, Ramlan, *Mamahami Ilmu Politik*, Raja Grafindo Persada, Jakarta, 2000.
- Tricahyo, Ibnu, *Reformasi Pemilu Mmenuju Pemisahan pemilu Nasional dan Lokal*, In Trans Publishing, Malang, 2009.
- Wahjono, Padmo, *Ilmu Negara*, Indo Hill.Co, Jakarta, 1961.