



A Weak Position of Elected Candidate Members of the House of Representatives Between Political Parties and Voter in Indonesian Elections

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Abstract-The participants in the house of representative election is political parties. However, elections are conducted to choose member of the Indonesian House of Representatives (IHR). Therefore, the Party has the authority to carry out democratic selection in determining the cadres to be nominated in the General Election (GE) which will later be directly elected by the people as the holder of sovereignty. The derivation of the relationship between political parties and candidate of IHR spawned so many election rules that position candidate of IHR in a weak position. Setting the pattern of relations between parties and candidate of IHR in elections has not guaranteed justice and has not been able to protect voters' votes. To photograph as well as analyze the position of candidates IHR as described above, the research method used is normative with a statute approach, a conceptual approach and a case approach. In this study resulted in the conclusion that the legal position of candidate of IHR between political parties and voters in elections is in a weak position and vulnerable to being treated unfairly by party leaders. So that candidate of IHR cannot fight for the people's votes (voters) they get before the law. Therefore, candidates for members of the house of representatives need to get guaranteed access to justice (AJ).

Keywords- Elected Candidate Member of Indonesian House of Representative; Political Parties; Voters, Elections

I. INTRODUCTION

Election participants are political parties (1945 Republic of Indonesia Constitution article 22E paragraph (3)). On the other hand, election held to elect members of IHR, Regional Representative Council, President and Vice President and Regional People's Representative Council as stated in 22E paragraph (2) of the Indonesian constitution. This means that through the election mechanism the people are given the political right to choose who will represent them in parliament.

Therefore, the Party has the authority to carry out democratic selection in determining the cadres who will be nominated in the GE which will later be elected directly by the people who hold sovereignty. The current electoral system for members of IHR uses a pure open proportional system where voters can directly cast their votes directly for the desired candidate for members of IHR. From this arrangement we can see how the relationships are built in the electoral system for members of our IHR, namely between Political Parties, Candidates and Voters (the people).

The derivation of such relationship patterns has given rise to many election rules that position elected candidates in a weak position. The first example is the regulation of replacing elected candidates by political parties for subjective reasons, namely violating the Articles of Association and Bylaws of the Party. The second is the regulation in the election results dispute resolution mechanism where candidates do not have legal standing if they do not obtain written permission from the chief of the political party. Regulating the pattern of relations between parties and candidates for IHR in elections does not guarantee justice and cannot protect voters' voices.

The regulation of relations between Political Parties and Candidate Members of the People's Representative Council in the current Indonesian election legal framework positions candidates in a weak position and is vulnerable to being treated unfairly and unable to protect the votes of the people who elect them. Vulnerable groups are groups whose rights have the potential to be violated. Or groups who find it difficult to fulfill their rights because their protection has not been regulated in law / it has been regulated but is limited. Or groups who find it difficult/unable to access justice facilities.

Candidates are very vulnerable whose rights cannot be fulfilled, namely the right to access justice when they feel disadvantaged in determining election vote acquisition and determining electability. From the current electoral legal framework in Indonesia, where candidates have the potential to be dismissed by their parties when they are declared elected on the grounds of violating internal party rules and not being able to submit a request to dispute election results when they do not get written permission from the political party, this is a strong reason for the candidate to be part of a group. vulnerable who must receive protection and guaranteed access to justice.

II. LITERATURE REVIEW

A. *Elections and Popular Sovereignty*

The country of Indonesia is a democracy and nomocracy. A rule of law and democracy certainly requires the protection of human rights and the implementation of elections as a tool to provide people's sovereignty [1]. In a representative democracy system, the people exercise sovereignty through general elections. As mentioned earlier, elections are an idea that helps build democracy in modern and large countries. This is because countries must be small for an ideal democracy. As the concept of the nation state becomes more complex, implementing democracy directly becomes no longer possible. The choice of representative democracy, as a middle way to democracy, is much closer to reality because it allows as many people as possible to be involved and participate in building government. At this point, it can be said that democracy is closely related to general elections, so that democracy becomes an important element in running the country [2].

Holding elections is a way to realize people's sovereignty; it is more than just "as a means of punishment"; The election is a momentum to restore awareness of political parties and politicians where they are not allowed to be at a distance from the people. Because, in a democracy, elections are intended to provide a new mandate as well as give the people the opportunity to correct the previous period [3].

B. *Political parties*

The existence of political parties is necessary in democracy to connect the government with the people. Democracy cannot function without political parties. Parties function to unite the will of the people and create more systematic public opinion to be used as a basis for orderly decision making [4]. In a modern country, many voters with diverse interests must be considered when making decisions. Therefore, political parties are very important in the process of making policies and selecting officials [5]. Many theories say that political parties determine whether a country is democratic. Therefore, political parties are an important part of a democratic political system [6].

Miriam Budiardjo said that political parties generally carry out four tasks: political communication, political socialization, political recruitment and conflict management [7]. One of these four objectives is to carry out political recruitment, or in other words, the party prepares and selects the best cadres to be selected as candidates or aspirants in the elections. Giovanni Sartori describes political parties as political groups that participate in general elections and can place candidates for public office [7]. This is where the importance of political parties in elections is the competing candidates, not the party leaders. So, candidates are an integral part of participation in elections. In the category of election participants, candidates are full legal subjects.

III. METHOD

Research methods are an important factor for scientific writing. A scientific work must contain truth that can be scientifically justified so that the results of the scientific work can approach the real truth. Methodology is a way of working on how to find or obtain something, or carry out an activity to obtain concrete results and also this method is the main way to achieve goals. As for answering and analyzing legal issues as described above, the research method used in this research is Normative Juridical, namely research that focuses on examining the rules or norms in applicable positive law. The normative juridical approach method is carried out by examining various formal legal rules such as laws, regulations and literature which contain theoretical concepts which are then connected to the problems that will be discussed in this paper.

IV. FINDING AND DISCUSSION

A. Arrangements and legal consequences of the relationship between parties and candidate of IHR within the legal framework of Indonesian elections

Parties are necessary for democracy in order to establish a conduit between the people and the government. A democratic system cannot function without political parties. One of the responsibilities of political parties is to group the people and to create a more systematic public opinion that can be used as the basis for orderly decision-making [4]. To make a decision, it is necessary to consider the large number of voters in a modern country with diverse interests. Therefore, Political parties have a big say in who gets elected to office and how policies are chosen as a whole [5]. Many theories say that political parties determine whether a country is democratic or not. Therefore, political parties are an important part of a democratic system [6].

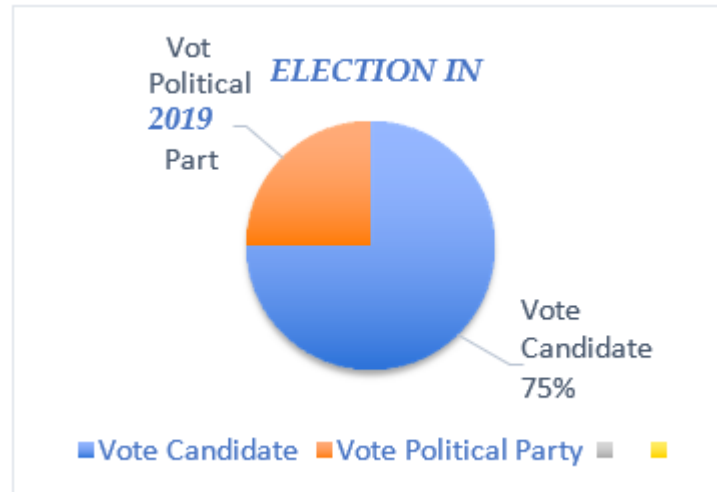
In his opinion, A political party, according to Giovanni Sartori, is an organization that takes part in GEs and uses them to nominate candidates for public office [7]. From this it can be interpreted that the essence of political parties in elections is the candidates who are competing, not the party leaders. So that candidates are an inseparable part of election participation. Candidates are full legal subjects and fall into the category of election participants.

Political Parties in Elections have an important role and position. Based on Indonesian Constitution article 22E paragraph (3), political parties are election participants. As election participants, political parties have the authority to select prospective members. (Article 241 paragraphs (1) and (2) Law on Elections.

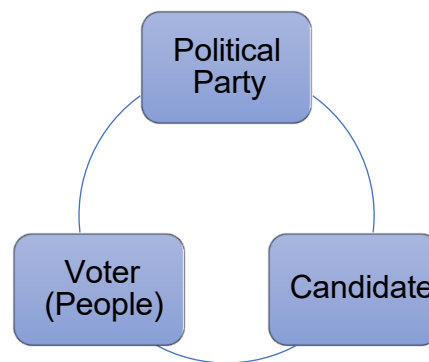
The requirement to become a candidate is to be a member of parties participating in the election. This means that you cannot nominate yourself through the independent route. In a democratic country, the existence of parties is mandatory, because they function as a forum for channeling people's aspirations and uniting for the same goal. The importance of this political party is also because it is a machine for producing the best cadres who will later be nominated before the people to be elected as their representatives.

The current electoral system for members of the IHR uses a pure open proportional system where voters can directly cast their votes directly for the desired candidate for members of the IHR and their election is based on the majority of votes.

Parties and candidates cannot be separated and are interconnected with each other. The proof in the 2019 elections, the overall vote share of candidates was 75%, while the overall vote share of political parties was only 25%. This means that the existence of a candidate is very decisive in obtaining seats for a political party.



A candidate who has been put forward by a political party in an election and has been elected by the people not only has a legal relationship with the party but also has a legal relationship with his voters. The legal relationship between the candidate and the supporting party is a private law relationship, while the legal relationship between the elected candidate and voters (the people) is a public law relationship.



Such a legal relationship gives rise to rights and obligations that are protected by the constitution and law, in order to provide guarantees for the person concerned to carry out the role entrusted to him, both by the party and the voters.

However, the relationship between the Party and the candidate in the GE is vulnerable to conflict and the candidate is in a weak position in front of the Party leadership. Because party membership is the main requirement for someone to be nominated and be able to occupy the position of member of IHR. So if someone loses their party membership because they are dismissed unilaterally by the party leadership, then the result is that when they are elected in the election they cannot be appointed and sit as a member of parliament because they no longer meet the requirements. This vulnerable situation has the potential for internal party conflict to result in unfair treatment of candidates and harm to the people's vote.

Election Law in article 426 paragraph (1) Jo. GE Commission Regulation (PKPU) Number 5 of 2019 article 32 paragraph (1) letter c regulates that the replacement of an elected candidate for members of the DPR is carried out if the relevant elected candidate: c. is no longer eligible to be a member of the House of Representatives. Furthermore, article 32 paragraph (2) explains that candidates who no longer meet the requirements as intended in paragraph (1) letter c, one of which is a candidate who has been dismissed or resigned from the political party that proposed the candidate in question.

Law Number 2 of 2011 concerning amendments to Law Number 2 of 2008 concerning political parties in article 16 paragraph 1 letter d states that the conditions for dismissal of party members are: violating the Articles of Association and Bylaws.

With such a legal construction, in practice many elected political party members are dismissed very easily on the basis of violating the bylaws and Articles of Association of the party without having to wait for legal action regarding the dismissal decision. The elected party cadres were immediately replaced with other cadres.

In the Political Party Law, disputes between political party members resulting from termination of membership in articles 32-33 are explained to be resolved internally by the party through the Party Court and are final. If unsuccessful, you can take legal action to the District Court. However, it still has to go through an internal mechanism first and takes 60 days, if it goes to the District Court it takes 60 days and the Supreme Court 30 days. The total is 5 months. In fact, the Election Law (Article 426 paragraph 5) requires a time limit for determining a replacement elected candidate of only 14 days.

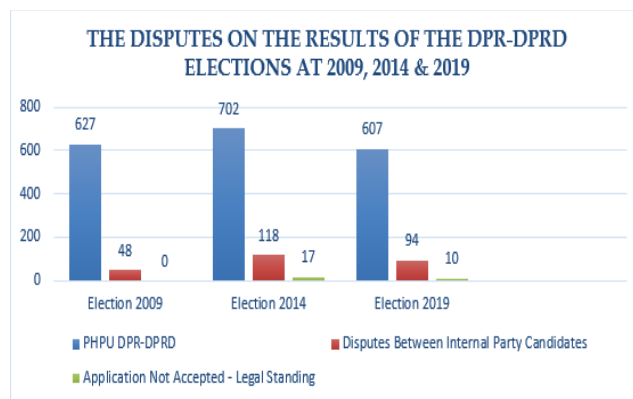
So it is impossible to take legal action against the dismissed party members. This condition results in the elected candidate being in a weak position and vulnerable to being treated unfairly. Apart from that, he also does not have AJ to take legal action to restore his rights and cannot fight for the votes of the people who have elected him.

An example of a case in this matter is the incident of the replacement of an elected candidate from the Gerindra party whose membership was terminated by the party and replaced by a candidate with the next serial number in electoral district 11 of West Java in the 2019 election.

The next portrait of the relationship between political parties and candidates in the legal framework for elections in Indonesia is the regulation of resolving disputes over the results of IHR. The procedural legal structure for disputes over election results for members of IHR as regulated in Constitutional Court Regulation Number 2 of 2018 stipulates that candidates to become applicants/related parties must obtain written permission from the party leadership when submitting a request to the Constitutional Court of Indonesia (CCI).

The legal position of candidates in disputes over election results is only superficial and does not mean anything because it still depends very much on whether the political party elite gives written permission or not. In its implementation, this legal construction has experienced many problems, because in the end candidates who believe their vote results were rigged and/or that the determination of vote results by the GE Commission (KPU) is considered wrong and detrimental, candidates cannot become Petitioners and/or Related Parties in disputes over election results to fight for votes. The people he received because he did not get written permission from the supporting party. Especially if the dispute occurs between candidates in the same party.

This condition shows that prospective members of the DPR-DPRD are in a vulnerable position and do not have access to justice (AJ) when their votes are cheated/harmed. As a result, prospective DPR-DPRD members do not have the opportunity to seek the restoration of their rights for losses resulting from fraud that happens in compliance with state law standards through official or informal justice institutions.



Data source from the Website of the CCI.

B. *The Access to Justice (AJ) Theory's Assessment of the Vulnerable Position of Candidates for Members of the Parliament*

The discourse on the relationship between candidate of IHR and political parties associated with the theory of AJ is something new and interesting. In general, when talking about candidate of IHR, they will be perceived as someone who is capable both economically and educationally, or in other words, is not a weak or vulnerable group. So that at first glance they do not need assistance to get protection in accessing the judiciary to get justice.

At the beginning of the birth of the concept of AJ was the existence of factual conditions that occurred in society, namely the existence of gaps and difficulties in accessing the justice system caused by several factors, namely:

(1) Social and economic inequality: The existence of social and economic inequality in society often causes some people to be have adequate resources to access legal services, such as advocates or legal aid. This can make it difficult for them to obtain justice and legal protection; (2) Unequal AJ institutions: Some regions, especially those that are remote or in developing countries, may have limited legal infrastructure. The lack of courts or law offices in certain areas can make it difficult for communities to access justice; (3) High costs of legal proceedings: An expensive justice system can prevent many people from bringing charges or defending their rights in court. Legal fees can include high advocacy costs, evidence gathering and court fees; (4) Inability to understand the law: The law is often complicated and confusing for some people, especially for those who lack formal education. An inability to understand the law can make it difficult for individuals to move forward in the legal process;

(5) Systemic discrimination and injustice: Some vulnerable groups in society, such as minorities, women, and the poor, may face systemic discrimination and injustice in the justice system.

According to Gary Blasi, as quoted by Vickrey, et.al., the traditional understanding of the concept of AJ is generally limited to the community's access to legal aid in court cases [8]. This concept has become synonymous with the fulfillment of justice for the needy, poor and marginalized people. They are considered not to have sufficient capital to proceed in court, so they need to be given a channel through legal aid institutions, which are generally free. In line with the vision of equality, the poor and marginalized need to receive assistance in realizing a truly fair trial.

AJ strive for the mechanism to be effective and accountable, as well as provide protection of rights, control over excesses of power and conflict resolution [9]. Furthermore, according to Bedner, as quoted by the World Bank, AJ also includes the ability of everyone to seek and defend themselves from unfair formal or informal systems, and the ability to influence the process of forming and implementing legal institutions. By establishing special institutions to address these problems, it is hoped that the potential for achieving justice for these marginalized people can be maximized, so that equality before the law can be achieved [10]. In it, the guarantee of assistance from an advocate or attorney is the main prerequisite [11].

At this point, the position of procedural justice as the mother of the concept of AJ is getting firmer. If we reflect on Rawls' or Habermas' theory of justice, the basic prerequisites that are part of the dictum of both are also the goals to be achieved by institutions of AJ, namely equalizing all parties, especially those who are marginalized, before the law. Conceptually, the key to achieving pure procedural justice, as previously stated, is that the subjects involved must sit in an equal position. Rawls put forward the thesis about the original position and the veil of ignorance. In the original position, it is imagined that people can act freely by accepting equality between one another [12]. As a prerequisite for this condition is the existence of a veil of ignorance, by temporarily killing the "conflict of interests ... thereby making election by acclamation a certain conception of justice possible [12]." The Habermas equalization project is carried out through a process of discursive sacrifice.

The proposal to expand the meaning of AJ was not only put forward by Vickrey, et.al. For Tom Cornford, AJ has two intertwined dimensions, namely descriptive and normative. What has been stated previously meets the descriptive criteria of AJ. AJ enables "citizens are able to gain access to the legal services necessary to protect and vindicate their legal rights." This definition is in line with the plural understanding that has been previously proposed, namely how to provide AJ for the poor and marginalized. But Cornford immediately added the normative category of AJ, namely the condition in which every member of society can defend their legal rights equally. Cornford argues that this expansion of meaning seeks to overcome biases in the meaning of justice in the descriptive concept of AJ.

For Cornford, there are two basic modalities that can condition the equality that AJ institutions aspire to. First, namely the rule of law doctrine. The concept of a rule of law provides prerequisites for the law to be applied in all matters in accordance with the provisions stipulated therein. This outline is in line with one of the most important principles in a rule of law, namely the principle of due process of law. The principle of due process of law was established with the aim of providing a strict platform for the implementation of governance [13]. All government actions must be based on law and measurable processes. Meanwhile, the second modality, which is actually still in line with the concept of a rule of law, is the concept of citizenship. Under the rule of law, every individual has equal legal standing and dignity.

Only the presence of a strong legal remedy can ensure the respect and protection of human rights. AJ is a fundamental issue that is crucial for the person whose rights have been violated to get their rights restored when those rights are violated or damaged. This is a crucial element in maintaining the rule of law [14]. In accordance with how AJ is defined, which is "as the capacity of individuals to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards" [15] whose free translation is that AJ

is defined as the ability of a person to seek and obtain restoration of his rights through formal or informal justice institutions for losses resulting from violations of rights in accordance with human rights standards.

The "AJ" movement is based on the principle that every citizen must have equal access to a system of legal processes and the rule of law. Three waves of movement—or the "AJ movement"—are recognized within the movement itself.) [16]. Alternative Dispute Resolution is included in the 3 waves of reform which describe the obstacles that must be overcome in the "AJ" movement. The first focused on the costs of the judiciary and the need for it help law, the second focuses on collective and fragmented lawsuits and utilizes class actions to file lawsuits, and the third focuses on the use Alternative dispute resolution to provide alternatives to dispute resolution [17].

Compared to before, this criterion seems to place more emphasis on the prerequisites of AJ for law enforcement institutions. Thus, contrary to common understanding, the concept of AJ needs to be interpreted in a broader sense. It's more than just a way to give the underprivileged, weak, and marginalized people access to legal aid now. AJ must be understood in a systemic, comprehensive and comprehensive manner, by involving all components of the legal system, be it culture, structure, and legal substance, including covering GE legal issues, especially related to the relationship between candidate of IHR.

From the current electoral legal framework in Indonesia where candidate of IHR have the greatest potential to be dismissed by their party when declared elected on the grounds of violating the statutes / bylaws and cannot submit a request for a dispute over election results when they do not get written permission from a political party is a strong reason to be a candidate of IHR is part of a vulnerable group that must get protection and guaranteed AJ.

V. CONCLUSION

The regulation of relations between Political Parties and Candidates in the current legal framework for Indonesian Elections positions candidates in a weak position and is vulnerable to being treated unfairly and unable to protect the votes of the people who elect them. Vulnerable groups are groups whose rights have the potential to be violated. Or groups who find it difficult to fulfill their rights because their protection has not been regulated in law / it has been regulated but is limited. Or groups who find it difficult/unable to AJ facilities. Candidates are very vulnerable whose rights cannot be fulfilled, namely the right to AJ when they feel disadvantaged in determining election vote acquisition and determining electability.

From the current electoral legal framework in Indonesia where candidates with high potential are dismissed by their party when they are declared elected and cannot submit a request to dispute election results when they do not get written permission from the political party, this is a strong reason that the candidate is part of a vulnerable group that must receive protection and guarantee of AJ. The meaning of vulnerable groups in the concept of AJ can be interpreted as not only the poor, disabled and marginalized but also candidates for members of the IHR.

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