Dissolution of Political Parties in Keeping Ideology and Security in Indonesia and Germany

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ABSTRACT

Discussions about political parties are always interesting to discuss. As a country that adheres to a constitutional democratic system, political parties have strategic functions in various directions of state policy. Political parties become the main container for the community to participate in managing and managing the country. The freedom of every person to establish a political party and to join a political party is guaranteed by the Constitution. But in practice, there are political parties that have conflicting ideologies that threaten state security. Indonesia and Germany have a Constitutional Court that has the authority to dissolve political parties. Noted, the German Constitutional Court has twice dissolved political parties. Whereas Indonesia, since the establishment of the Constitutional Court in 2003, has never been even though there was an application for the dissolution of the proposed political party. Even so, it is undeniable that someday there will be requests for dissolution of political parties in Indonesia. Therefore, through this research will be discussed about the mechanism of dissolution of political parties in Germany in maintaining the country's ideology and security. Through comparative studies, it is expected to be a reference for the Indonesian Constitutional Court in exercising the authority to dissolve political parties. The conclusion obtained in this study is that there are rigid and detailed parameters regarding the reasons that form the basis for dissolving political parties in Germany. Whereas in Indonesia, the history of the dissolution of political parties carried out prior to the existence of the Constitutional Court there were no clear parameters used by the Government as the basis for the dissolution of political parties, so that the Government tended to be arbitrary. Therefore, the Indonesian Constitutional Court needs to adopt a criterion that is the basis for the dissolution of political parties in Germany so that it will no longer repeat past history that arbitrarily dissolves political parties without a clear basis for criteria. With clear criteria for dissolution of political parties, the Constitutional Court can still maintain the constitutional rights of citizens to associate and assemble and at the same time the Constitutional Court can safeguard the country's ideology and security.

KEYWORDS: Ideology, Indonesia, Germany, state security and dissolution of political parties

INTRODUCTION

Political parties are a mirror of freedom of association and freedom of assembly as a form of freedom of thought and freedom of expression. Therefore, the freedom of association in the form of political parties is highly protected through the constitution in a constitutional democracy. Nonetheless, freedom of association has restrictions that are needed in a democratic society for national security and state safety, to prevent crime, and to protect health and morals, and to protect other rights and freedoms (Hilaire Barnett, 2004, p. 589). These restrictions must be strictly interpreted that restrictions must be

regulated in the rule of law; must be carried out solely to achieve goals in a democratic society; and must be really needed and proportionate to social needs (Janusz Symonides, 2000, p. 91-92).

As a form of implementation of this constitutional democracy, since the inception of the Indonesian State reform era has regulated the dissolution of political parties in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that a political party can be dissolved through a Constitutional Court ruling (MK) which is final (legally binding). The Constitutional Court can dissolve political parties that have been registered and have status as legal entities in the Ministry of Law and Human Rights if it is proven that in the trial the Constitutional Court carried out constitutional violations. Some forms of constitutional violations as a reason to be able to dissolve political parties are regulated in Law Number 24 of 2003 concerning the Constitutional Court (Law of the Constitutional Court) in conjunction with Law Number 2 of 2008 concerning Political Parties, as amended by Act Number 2 of the Year 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Law on Political Parties).

In Article 68 paragraph (2) of the Constitutional Court Law states that the Constitutional Court can dissolve a political party based on reasons and proven that the ideology, principles, objectives, programs, and activities of the political parties concerned contradict the Republic of Indonesia Constitution 1945. The same provisions are also regulated in Article 40 paragraph (2) and paragraph (5) juncto Article 48 paragraph (3) and paragraph (7) of the Political Party Act.

Under the Law on Political Parties that Political Parties are legal entities (rechts person) through the registration and ratification process by the Minister of Law and Human Rights of the Republic of Indonesia, so that in the traffic of private law and public law acts the same as the subject of human law (natuurlijkepersoon) rights and obligations. If a human being can be sued and/or prosecuted in court or outside the court, then the legal entity is also the case (Subekti, 2002, p. 20-21). Underlying the concept of civil law, the dissolution of a political party through a Constitutional Court decision not only has a legal effect on the exclusion of the political party as a General Election participant, but furthermore is the cancellation of the status of the legal party's legal entity and must be announced in the State Gazette of the Republic of Indonesia by the Ministry of Law and Human Rights of the Republic of Indonesia.

Several reasons that can be used as a basis for dissolving political parties by the Constitutional Court are as stipulated in Article 68 paragraph (2) of the Constitutional Court Law juncto Article 40 paragraph (2) and paragraph (5) juncto Article 48 paragraph (3) and paragraph (7) of the Act Political Parties, including a) Having ideology, principles, objectives, programs, and activities of the political parties in question contradict the 1945 Constitution of the Republic of Indonesia; b) Adopt and develop and spread the teachings or understandings of communism / Marxism-Leninism; c) Conducting activities or consequences arising in contravention of the 1945 Constitution of the Republic of Indonesia and the laws and regulations; or d) Conduct activities that endanger the integrity and safety of the Republic of Indonesia.

Since the Constitutional Court was formed in 2003 until now, the Constitutional Court has never received an application regarding the dissolution of political parties (Constitutional Court, 2011, p. 11). But that does not mean that the regulation regarding

the dissolution of political parties is not considered. The dissolution of political parties is a political conflict and will have a wider and greater impact than ordinary legal cases and can even lead to the State in an emergency situation. For this reason, the regulation regarding the dissolution of political parties must be clearly regulated and does not lead to multiple interpretations.

Since the reform era, the regulation regarding the dissolution of political parties is no longer only regulated through the laws of political parties but has been regulated in the 1945 Constitution of the Republic of Indonesia. This is because several reasons underlying the dissolution of political parties are constitutional violations so that in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI issues the dissolution of political parties as one of the authorities of the Constitutional Court.

Provisions concerning the dissolution of political parties contained the Constitutional Court Law as an organic rule of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia and the Political Party Law and Government Regulation Number 12 of 2008 concerning Local Political Parties in Aceh. However, none of the provisions of the Constitutional Court Law, Political Party Law and Government Regulations for Local Political Parties in Aceh regulate the legal consequences that will arise when a political party is dissolved through the Constitutional Court Decision. Whereas the legal consequences are very urgent to determine political decisions and other legal issues that can be carried out after the dissolution of the political party.

Arrangements regarding the dissolution of political parties in the Constitutional Court Law only stop at the implementation of the Constitutional Court Decision which has been read out in the Plenary Session which is open to the public. If an application for dissolution of a political party is granted by the Constitutional Court, the Constitutional Court declares that the political party dissolves it. The implementation of this decision through the cancellation of registration of the political party as a legal entity by the Indonesian Ministry of Law and Human Rights and the Constitutional Court's decision must be announced in the State Gazette of the Republic of Indonesia. The question that arises then is what about the representatives of the people who have been elected and sit in the DPR, DPRD institutions, and even the nominated President and Vice President and Regional Heads and Deputy Regional Heads come from the dissolved political parties?

Under the Law on Political Parties, political parties are in the form of legal entities that are ratified by the Decree of the Minister of Law and Human Rights of the Republic of Indonesia. Because of this, political parties can carry out various legal actions both in the public domain and in the private sphere. Nomination of a number of DPR, DPRD members, and even the nomination of the President and Vice President as well as the Regional Heads and Deputy Regional Heads because these political parties are legal entities that can carry out all legal actions like human beings.

The legal consequences of the dissolution of this political party can be seen from several countries, for example in Turkey (Article 69 Para 8 of the Constitution of the Republic of Turkey), Germany (Article 6 of the 3 Bundesverfassungsgerichts-Gesetz) and Taiwan (Article 30-I of the Procedure Act) is not a replacement party can be established either with the same name or another name but has the same ideology, principle, purpose, program, or activity with the reason for the dissolution of the party. This means that the party is declared a prohibited party. Whereas in Pakistan special sanctions were given to

national and provincial parliamentarians from the dissolved party (Article 16 Para 2 The Political Parties Order, 2002). Membership of representative institutions is also prohibited from participating in general elections for four years from their termination.

Legal consequences for political parties that have been dissolved not only against political activities or involvement in the political process, but also the political law of political parties. This is as applied in the German State that the legal consequences of the dissolution of political parties stipulated in Article 6 of Paragraph 3 of the Bundesverfassungsgerichts-Gesetz is that the assets of political parties can be confiscated by the state for the public interest. Whereas in Bulgaria (Article 24 of the Bulgarian 2 Political Parties Act) it is determined that the assets are regulated more clearly, even it is stated that the state is responsible for debts held by dissolved political parties.

Based on the regulation regarding the dissolution of political parties in the aforementioned countries, it can be stated that the dissolution of the political party has a legal effect on a) No political party can be established that has the same ideology, principles, and objectives as the political party that has been dissolved; b) Political parties dissolved are declared as prohibited political parties; c) Members of Parliament who are from dissolved political parties are dismissed; d) Prohibition of members of political parties disbanded participating in the election for 4 (four) years since the dissolution of their party; e) The wealth of political parties dissolved is confiscated by the State for the public interest, and f) the State is responsible for all debts and obligations borne by the dissolved political party.

Dissolution of political parties in several countries has no legal effect on the position of the President and Vice President and the Regional Heads and Deputy Regional Heads nominated through dissolved political parties. This is due to the fact that the election participants in the General Election of the President and Vice President as well as the Regional Heads and Deputy Regional Heads are not political parties who carry them, this is different from the parliamentary elections where those who are election participants are political parties.

Arrangements concerning legal consequences for the dissolution of political parties in Indonesia have only been regulated through Presidential Decree Number 13 of 1960 which stipulates that as a result of the dissolution or prohibition of a political party, party members who are members of the MPR, DPR, or DPRD are considered to stop as body members the agency. Although this Presidential Decree was criticized by the Masyumi and PSI parties because it did not have a constitutional basis as a source of law, with the Presidential Decree the Masyumi and PSI parties were dissolved. The regulation regarding the legal consequences of Presidential Decree Number 13 of 1960 is limited to membership status in the MPR, DPR, and DPRD from political parties that have been dissolved, does not regulate the legal consequences of members of political parties dissolved in various political activities or civil relations which are borne by the dissolved political party.

The Constitutional Court Law and the Political Party Law in no way regulate the legal consequences of the dissolution of this political party. The existence of legal loopholes in the regulation regarding the legal consequences of the dissolution of the political party, then the Constitutional Court made a breakthrough by regulating it in the Constitutional Court Regulation Number 12 of 2008 concerning Procedures for Procedure in Dissolution of Political Parties (PMK Dissolution of Political Parties). In Article 10 paragraph (2)

PMK Dissolution of the Political Parties stated that "Against the legal consequences of the Court's ruling which granted the request for dissolution of political parties is related to a) Prohibition of the right of living of political parties and the use of party symbols throughout Indonesia; b) the dismissal of all members of the People's Legislative Assembly and the Regional People's Legislative Assembly from the dissolved political parties; c) prohibition of former political party administrators who are disbanded for political activities; and d) the takeover by the state of the wealth of the dissolved political party.

The legal consequences of the dissolution of political parties are related to political issues in decision making by the leaders of the MPR, DPR, and DPRD so that the arrangement must be through a political agreement. In addition, the legal consequences for the transfer of civil responsibility from political parties to the government. So that the regulation regarding the dissolution of political parties through PMK can be questioned by their political and juridical legitimacy. Whereas Article 86 of the Constitutional Court Law only gives the authority to regulate further the implementation of resolutions from the duties and authorities of the Constitutional Court, it does not mean that the Constitutional Court is given legislative powers through the Constitutional Court Act like the DPR.

RESEARCH QUESTIONS

Based on the above background, the formulation of the problem to be examined is how the dissolution of the political party by the Constitutional Court in maintaining the ideology and security of the country in Indonesia and Germany?

RESEARCH METHOD

The method of legal research is a scientific activity, which is based on certain methods, systematics, and thoughts, which aims to learn something or some specific legal symptoms, by analyzing it. In addition, there are also factors that are profound about the legal factors, to then try to solve something of the problems that arise in the symptoms concerned (Zainuddin Ali, 2009, p. 18).

The type of research used in writing this law is normative legal research. Normative legal research is legal research that puts the law as a norm system building. This research begins with an analysis of the decision to dissolve political parties at the German Federal Court. The data of this study include secondary data, namely data obtained from the literature review with a legal material consisting of a primary legal material which includes decisions and legislation, and secondary legal materials, namely, legal materials relating to primary legal materials that are helpful in the analysis process include books and journals.

Data analysis techniques in this study used qualitative descriptive methods. As for what is meant by descriptive is to clearly describe the actual conditions, while what is meant qualitatively is the analysis which is then described so as to obtain an understanding. The data used is data that is closely related to the problem under study. So what is meant by qualitative descriptive in this study is an analysis that describes the decision to cancel political parties based on the decision to dissolve political parties in Germany.

THEORETICAL FRAMEWORK

Political Parties, Ideology, and State Security

On the other hand, Carl J. Frederik said that political parties are a group of people who are organized and stable with the aim of seizing or maintaining power. Raymond Garfield said that political parties consisted of a group of citizens who were more or less organized, acting as a political entity. Sigmun Neuman said political parties are organizations of political activities that seek to dominate the power of the government and win popular support for competition with other groups who have different views (Widagdo, H. B, 1999, p. 6). According to Miriam Budiarjo, a political party is an organized group in which its members have the same orientation, ideals, and values as the group's goal of gaining political power and seizing a political position in a constitutional way to implement its policies (Surbakti, Ramlan, 1999, p. 44). Whereas, according to Law Number 2 of 2011 concerning Political Parties Article 1 paragraph (1) "Political Parties are organizations that are national in nature and formed by a group of Indonesian citizens voluntarily on the basis of the similarity of will and ideas to fight for and defend political interests members of political parties, communities, nations and countries, as well as maintaining the integrity of the Unitary Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia ".

In Indonesia political parties have functions, rights and obligations set out in the Political Party Law. One of the functions of political parties contained in article 34 paragraph (3) letter a is to carry out political education for members of political parties and society. The aim of political parties is always included in their articles of association in accordance with Article 2 of the Political Party Act. The goal is to describe what the future will be achieved together. The objective is used as a guideline in directing the activities of political parties and various sources of legitimacy of the existence of political parties and a source of motivation for the community to identify themselves with the political parties concerned. The purpose of political parties serves as a benchmark to assess the success or failure of political party leaders. The purpose of a political party is basically the desired condition that is always pursued to be realized in the future. Political parties must try to formulate their objectives in such a way as to be truly aspirational, perhaps achievable and oriented to a more hopeful frontal mass, have a strong appeal to build the party's image and build strong support (Sastroatmodjo Sudijone, 1995, p. 34)

Countries that embrace democracy, the idea of popular participation has an ideological basis that the people have the right to help determine who will be the leader who will determine public policy. The totalitarian countries' idea of popular participation is based on the view of the political elite that the people need to be guided and fostered to achieve lasting stability. To achieve this goal, political parties are a good tool to do this (Benjamin Reilly, 2007, p. 25).

The right of Association and Gathering

Indonesia as a state of law (rechtstaat or the rule of law) (Jimly Asshiddiqie, 2005, p. 21), one of the characteristics that must be fulfilled by the state, is the protection and guarantee of human rights for all its citizens. The assurance of human rights is also one of the objectives of law enforcement because humans have a central position in law enforcement. The concept of human rights is not a new thing for the Indonesian people. One of

Indonesia's commitments towards respecting and guaranteeing the protection of human rights is contained in the second principle of Pancasila, the foundation of the nation and the philosophy of life of the Indonesian people, namely "Just and Civilized Humanity". The 1945 Constitution that was born before the Universal Declaration of Human Rights has a fairly progressive human rights perspective, as affirmed in paragraph 1 of the Preamble to the 1945 Constitution. The right to freedom of association is a fundamental right. In Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia NRI gives a very strict guarantee regarding the right to freedom of association. The nature of the right to freedom of association is also regulated in Article 24 of Law No. 39 of 1999 concerning Human Rights.

Dissolution of Political Parties

The development of political parties in Indonesia experienced ups and downs in line with the changing political dynamics and state administration. The development of political parties can be seen in terms of the number of political parties and party ideology (Widayati, 2011, p. 625). With regard to the number of political parties, quantitatively, the number of political parties participating in the election in the reform era has always been volatile, unlike in the New Order which is always followed by 3 political parties, namely the United Development Party, the Functional Group and the Indonesian Democratic Party, except the election first New Order which was attended by 10 Political Parties. The change in the number of political parties participating in the election in the Reform Order was caused by several factors, namely: first, the requirements for the establishment of political parties that were continuously updated and tightened through the Law; second, the application of the electoral threshold which is one of the requirements of political parties can be the next participant; and third, voters who are more intelligent / rational in making choices.

The dynamics of the development of political parties in the election contestation can actually be interpreted as a form of increasingly shifting democratic and electoral systems that were originally undemocratic towards a more democratic one. But this does not later make our democratic system and elections truly democratic. In fact, there are still a number of other problems that make democracy and the system of organizing elections not yet to be said to run democratically. Among them are the limited reasons for the proposed dissolution of political parties regulated in the law, and the giving of a single role to the government in the proposed dissolution of political parties (Josef M.Monteiro, 2010, p. 52) which unwittingly undermines basic values. democracy.

In this regard, it should be noted that the dissolution of political parties is basically believed to be a mechanism to supervise political parties (Jimly Asshiddiqie, 2005, p. 128). Usually, the act of dissolving a political party is a follow-up for a political party that violates a prohibition stipulated in the legislation or the constitution.

An example is the country of Pakistan, in Article 15 of the Political Parties Act 2002 (Law on political parties in 2002), affirming that a political party can be dissolved if it is proven (i) is a political party that is assisted in funding its activities by foreign powers, or (ii) It is proven that the process of forming the party is detrimental to the sovereignty or territorial integrity of the country, or (iii) proven to conduct activities that are detrimental to the sovereignty or integrity of the country's territory, or (iv) the activities of political parties are proven to be related to the crime of terrorism (indulging in terrorism) (Allan

FG Wardhana and Harry Setya Nugraha, 2013, p. 12). In this case what needs to be underlined is that Pakistan uses legal instruments to supervise political parties, which if political parties violate the prohibition provisions it can be dissolved.

In addition to Pakistan, there are several other countries that regulate the dissolution of political parties. Some of these countries are Albania, Armenia, Austria, Azerbaijan, Croatia, Chechnya, Georgia, Hungary, Germany, South Korea, Macedonia, Moldova, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Thailand, Turkey, Taiwan and Chile (Muchamad Ali Safa'at, 2011, p. 101).

In Indonesia, restrictions on actions that should not be carried out by political parties which, if violated, the political party will get sanctions that have been clearly regulated in Article 40 of the Law on Political Parties. Regarding a violation committed by a political party, Article 48 of the Law on Political Parties regulates certain types of sanctions that can be imposed, namely administrative sanctions, freezing sanctions, and dissolution sanctions. Article 2 PMK Dissolution of a Political Party with respect to sanctions for dissolution, a political party can only be dissolved by the Constitutional Court if the ideology, principle, purpose, program of a political party contradicts the 1945 Constitution of the Republic of Indonesia; and / or the activities of political parties are contrary to the 1945 Constitution of the Republic of Indonesia or the resulting consequences are contrary to the 1945 Constitution of the Republic of Indonesia.

RESULT AND DISCUSSION

The Decision on the Dissolution of Political Parties at the German Federal Constitutional Court

There have been several requests for dissolution of political parties at the German Federal Constitutional Court. Of the several applications, there were 2 (two) applications granted. The German Constitutional Court has the authority to deal with the dissolution of the political party that authority is contained in Article 21 paragraph (2) of Basic Law which is subsequently amended on July 13, 2017, so that the regulation regarding the authority to dissolve the political party is stated in Article 21 paragraph (2) and paragraph (4) Basic Law.

The authority to deal with the dissolution of political parties is specifically regulated in Article 13 paragraph (2) of the Act on the Federal Constitutional Court (Bundesverfassungsgerichtsgesetz - BVerfGG (hereinafter referred to as the German Constitutional Court Law), which states "The Federal Constitutional Court shall decide: (2) on the unconstitutionality of political parties. "The provisions mentioned above say that political parties can be declared contrary to the constitution by the Constitutional Court based on the objectives or behavior of followers who are not suitable or try to eliminate the basic order of democracy and endanger the existence or existence of the Federal Republic of Germany.

The German Federal Constitutional Court since its establishment up to now has counted 9 applications for dissolution of political parties. And only decide 5 of the 9 requests. From the data, at least there are only 2 requests for dissolution of political parties granted by the German Constitutional Court, namely the application for the dissolution of Sozialistische Reichspartei or the Socialist Reich Party (SRP) in 1952 and the request for the dissolution of the Kommunists he Partei Deutschlands or Communist Party of Germany (KPD) in 1956 and 2 requests for rejected political parties, namely applications for

dissolution of the Free German Workers Party or Freiheitliche Deutsche Arbeiterpartei (FAP) and the National List (NL) in 1994 and requests for the dissolution of the National Democracy Partei Deutschlands or National Democratic Party of Germany (NPD) in 2017, and 1 request for the dissolution of a political party which was dismissal or not continued, namely the application for the dissolution of the National Democratic Party of Germany (NPD) in 2003.

Dissolution of Political Parties *Sozialistische Reichspartei* (SRP)

Sozialistische Reichspartei or Socialist Reich Party (SRP) is the party that was first declared unconstitutional by the German Constitutional Court (German Constitutional Court ruling, October 23, 1952, BVerfG 2, 1). SRP was founded in 1949 and won the second most seats in parliament, but failed in the Bundestag election. SRP conducted a campaign and the publication of the party as well as recruitment of members as well as other parties. However, this activity was believed by many in Germany that SRP was oriented towards the neo-Nazi movement. That SRP activities, in reality, are trying to disrupt the democratic order, the federal government at that time submitted an application to the German Constitutional Court so that SRP was declared to be contrary to the constitution in accordance with Article 21 paragraph (2) Basic Law (before the amendment). In SRP it is stated that it is contrary to the constitution because based on the evidence that the SRP is a newly formed party from the Nationalsozialistische Deutsche Arbeiterpartei Organization or the dissolved National Socialist German Workers Party (Nazis or NSDAP).

Similarities in terms of structure, program, nature of membership, as well as activities of SRP leaders are also a consideration for the Court to state that SRP is contrary to the constitution and the existence of SRP has the potential to damage the democratic order if in subsequent developments if the SRP has a majority of votes in parliament like the Nazis or NSDAP. Based on all the facts, the SRP, in fact, has similarities with the Nazis' Party as well as the aim of replacing and even eliminating democratic values as stated in Article 21 paragraph (2) Basic Law, and the Court stated that the SRP was against the constitution, took over all assets, and prohibited their formation organization returns similar to SRP.

Dissolution Case *Kommunistsche Partei Deutschlands* (KPD)

The request for dissolution of the KPD was filed by the State Government of Adenauer State in 1951, the same year as the decision of the German Constitutional Court concerning the dissolution of the SRP, but at that time the German Constitutional Court was unable to issue a decision on the KPD immediately and only decided on August 17, 1956. The decision was postponed because the Court is of the opinion that the petition is premature and the dissolution of the KPD will be better done by means of political selection in the election and disbanded by itself because support for the KPD can be said to be no longer there or not get majority support so as not to endanger the values of German democracy.

In its decision, the Court provides an interpretation of "free democratic basic order" in Article 21 paragraph (2) of Basic Law and is not the same as the interpretation used to dissolve SRP. enough to eliminate the constitutional status of political parties. According to the Court, to eliminate the constitution of political parties or dissolve political parties is not enough to have a goal that fights the basic principles of democracy but also manifests it into a political action. The purpose or plan is reflected in the program of political party activities, official statements of political party leaders and materials for political party

education.

Dissolution of *the Freiheitliche Deutsche Arbeiterpartei* (FAP) Party and *the National List* (NL)

The Freiheitliche Deutsche Arbeiterpartei or the Free German Worker 'Party (FAP) is a party that has a Neo-Nazi ideology and is a small party with around 500 members. There is not much information related to the dissolution of this party. However, it is known that the request for dissolution of the FAP not only requested the dissolution of the FAP but also the application for dissolution of the National List (NL). The request by the Charity Court was rejected by the argument that although the FAP and NL had views that were contrary to democracy, FAP and NL did not qualify as political parties as stipulated in the legislation but only as an "association".

Dissolution of *The National Democratic Party of Germany (Nationaldemokratische Partei Deutschlands*- NPD)

The German Democratic National Party was a German ultranationalist right-wing party founded on November 28, 1964, as the successor of Deutsche Reichspartei. In early September 1965 the political party organization covered almost the entire Federal Republic of Germany with a vote percentage of between 5.8% and 9.8% of the total number of legitimate polls and got 61 MPs in the federal state parliament (Landtag) of Baden- Wuerttemberg, Bavaria, Bremen, Hesse, Lower Saxony, Rhineland Palatinate and Schleswig-Holstein. But in the last 35 years, the NPD has not won seats in the federal state parliament (Landtag) or the Bundestag Election.

Federal Constitutional Court dropped Decision Number 2 BvB 1/13, on January 17, 2017, which stated that it rejected the application for dissolution of the National Democratic Party of Germany (NPD), including the Young National Democrats (Junge National Democracy - JN) sub-organization, the National Women's Ring (Ring Nationaler Frauen - RNF) and the Municipal Political Union (Kommunalpolitische Vereinigung - KPV). At least it can be seen that in deciding the application for dissolution of a political party if the political party violates the provisions of Article 21 of the Basic Law. However, in interpreting Article 21 of the Basic Law, the Court does not apply the same thing. This is because the Court does not only consider the normative requirements stated in Article 21 of the Basic Law, but also considers the political situation that occurred at that time.

The Reasons for Dissolution of Political Parties at the German Federal Constitutional Court

Political parties are one of the pillars of democracy which is very important in the life of the nation and state. The same is true for political parties in the Federal Republic of Germany (Basic Law for The Federal Republic of Germany). This is stated in the German constitution as stipulated in Article 21 paragraph (1) of Basic Law which states that political parties should be a forum for public politics that can be freely formed but must remain based on democratic principles and promote transparency of budget and political party assets.

As a consequence of the formation of political parties, it is the duty of the state to regulate and provide funding for parties that have fulfilled the provisions of the prevailing laws and regulations. This is as stipulated in Article 18 paragraph (1) of the Politi-

cal Parties Act which states that political parties in Germany get funding from the state (state funding) to support the implementation of the constitutional mandate (Basic Law) to build a democratic-constitutional society. The number of state funding that will be received by each party depends on the extent of the constituent coverage they achieve. This coverage is measured by the performance of political parties in the European General Election at the parliament level.

The existence of state funding shows that political parties are an important element in the government system. The party which is the representation of the community in channeling political aspirations to encourage changes in the context of nation and state. State support for political parties also has the consequence that their existence should strengthen democratic principles and safeguard the integrity of the state. The Constitutional Court of the Federal Republic of Germany, in its official website, states that political parties are an important network between voters, parliament, and government that mutually reinforce each other. In other words, the government can also encourage political parties to run according to the constitutional corridor. Although the principle of "militant democracy" has become fundamental in overcoming the existence of political parties that have the potential to undermine the marwah of the constitution. To maintain this balance, political parties as one of the pillars of democracy cannot be dissolved by the parliament but given to the Constitutional Court of the Federal Republic of Germany to examine, decide and try cases of dissolution of political parties based on law and constitution.

Rainer Grote stated that the background of the birth of militant democracy was basically to prevent the recurrence of the past history, namely the destruction of the Weimar Republic by political parties that were nationalist or communist. Starting from that history, the concept of militant democracy was raised in the German Basic Law of 1949. Substantially, militant democracy was conceptualized as strengthening democracy so that it could refrain from all forms of destructive threats while remaining alert to all possible things that endanger democracy, especially for groups that reject the basic principles of democracy and efforts to destroy the democratic order of the government system.

Implications for the dissolution of political parties in the Federal Constitutional Court of Germany

Democracy, like federalism, separation of powers and the rule of law is a German political principle. Although the German Constitution does not clearly define the term democracy which has been debatable in German literature. The Federal Constitutional Court of Germany and experts tend to interpret democracy in Germany in relation to certain institutions and principles contained in the constitution (Basic Law). This includes the establishment of representative institutions. In this context political parties basically get constitutional guarantees in democratic infrastructure, but the German Federal Constitutional Court (German Constitutional Court) still considers the aspects of legitimacy, the effectiveness of the opposition, minority rights, and justice in funding political parties. Departing from German history, which in turn encouraged the constitution to protect democracy from the threat of political liberalism by preparing constitutional instruments to ensure the sustainability and stability of democracy (Donald P. Kommers and Russell A. Miller, 2012, p. 216).

The existence of political parties that have become an inseparable part of democracy, leaving a long past history for the Federal Republic of Germany. As reported by the

official opponent of the Constitutional Court of the Federal Republic of Germany stating that the German Constitutional Court dissolved two parties in 1952 namely the Socialist Reich Party (SRP) and the Communist Party of Germany (KPD) in 1956. From the dissolution of the two parties, Germany later strengthening its constitution so that it is not easily weakened by anti-democratic elements that threaten "free democratic basic order" as stipulated in Article 21 paragraph (2) of Basic Law. Then in 2017, the German Constitutional Court decided to reject the dissolution of the political party the National Democratic Party of Germany (NPD). This application was basically registered in 2001 but was later discontinued in 2003 due to procedural aspects.

The dissolution of political parties in the German Constitutional Court has legal and very broad implications both institutionally, funding and membership status for political parties sitting in parliament. Based on Basic Law Article 21 paragraph (2) states that political parties which in their movement aim to overthrow or bring down basic democratic principles and threaten the existence of the Federal Republic of Germany will be declared contrary to the constitution or dissolved. After the decision of the NPD political party in January 2017, there was an amendment to the Basic Law Article 21 paragraph (3) dated July 19, 2017 stating that political parties which in their movement aim to overthrow or bring down the basic democratic principles and threaten the existence of the Federal Republic of Germany will not get funds from the state (state funding) and other tax or financial benefits. In addition to being regulated in the Basic Law, the implications of the dissolution of political parties are also regulated in the Law of the German Federal Constitutional Court (FCC Act) Article 2a which states that the German Constitutional Court has the authority to stop funding political parties from the state.

In addition to the suspension of funding from the state, the German Constitutional Court in the case of the decision to dissolve political parties can also dissolve part of the party organization and all party assets will be confiscated for the public interest, as stipulated in Article 46 paragraph (3) of the German Constitutional Court Law. The following implication is the loss of membership status of parliamentarians whose parties are declared unconstitutional. This is regulated in Chapter 46 of the Federal Election Act concerning the loss of membership status in the German Bundestag paragraph (1) number 5 which states that the loss of parliamentary membership status in the Bundestag if the German Constitutional Court has ruled a violation of Basic Law Article 21 paragraph (2) second sentence, where the party and its branches and membership status are declared unconstitutional.

Based on the description above, it can be understood that there is a legal consequence of the dissolution of a political party, that is, firstly, the party's institutions are declared to be in conflict with the constitution including the organization of its wing/branch. Second, the termination of funding from the state from the benefits of other taxes. Third, assets or assets of political parties are confiscated for the public interest and the fifth loss of parliamentary membership status.

Dissolution of Political Parties as a Means in Maintaining State Ideology and Security

Indonesia as a democratic country guarantees the existence of political parties (Ihlasul Amal, 1996, p. Xv) which is one of the manifestations of the right to freedom of association as reflected in Article 28 of the 1945 Constitution of the Republic of Indonesia. These

political parties are urgently needed because political parties have a position (status) and role (role) as a very strategic link between government processes and citizens. Even a good party system will determine the functioning of the constitutional system based on the principle of check and balances in a broad sense (Jimly Asshiddiqie, 2005, p. 52-53). In the political context, especially in the power relations, political parties have changed the relationship between the people and the authorities from the beginning disqualifying the people from the stage of political power, to positioning the people as important actors and axis in the relationship, even in contemporary democracy the existence of political parties has become the main instrument for people to compete and gain control over political institutions (Sigit Pamungkas, 2012, p. 3).

Because a political party is a mirror of freedom of association and freedom of assembly as a form of freedom of thought and freedom of expression, its existence is highly protected through the constitution in a constitutional democracy (Moh Shaleh, 2011, p. 7). However, freedom of association has restrictions needed in a democratic society for national security and state safety, to prevent crime, and to protect other rights and freedoms.

The dissolution of political parties is a limitation of the right of association which is intended to protect democracy, the constitution, state sovereignty, security, and ideology. Before the existence of the Constitutional Court, in Indonesia, a political party had been dissolved against Masyumi through Presidential Decree No. 200 of 1960, the dissolution of PSI through Presidential Decree No. 201 of 1960 and the dissolution of the PKI (Presidential Decree No. 1/3/1966).

The guarantee of freedom of association as a human right regulated in the constitution provides an opportunity for everyone to be free to gather based on the views, aspirations, goals and form groups such as political parties, community organizations, non-governmental organizations, and so on. Political parties themselves are a form of freedom of association which has an important role in relation to democratic efforts in a country based on popular sovereignty. Political parties are political infrastructures, namely institutions/organizations that exist in the community and can affect the administration of government (I Made Subawa, 2005, p. 154), which is a bridge between the government and its people.

CONCLUSION

In the Political Party Law, there are restrictions on the existence of political parties which are indicated by the prohibitions described in Article 40 of the Political Party Law. These restrictions are accompanied by administrative sanctions and sanctions for dissolution of political parties by the Constitutional Court as contained in Article 48 paragraph (3) and (7) of the Political Party Act. The reasons for the dissolution of political parties can also be seen in Article 68 paragraph (2) of the Constitutional Court Law, that is, if a political party has ideology, principles, objectives, programs, and activities that are contrary to the 1945 Constitution of the Republic of Indonesia. Dissolution of Political Parties.

Based on the three laws and regulations which state the reason for the dissolution of political parties by the Constitutional Court, it can be seen that there are differences in the reasons for the dissolution of political parties between the Constitutional Court Law and PMK Dissolution of Political Parties and Political Party Law. The reason for the dissolution of political parties in the Political Party Law that political parties based on the teachings

of communism / Marxism-Leninism are not mentioned in the Law on the Constitutional Court and PMK Dissolution of Political Parties. Nevertheless, basically communist teaching is an ideology that is not in accordance with the ideology of Pancasila that we embrace in Indonesia as the basis of the state whose values are upheld in the 1945 Constitution of the Republic of Indonesia. with the 1945 Constitution of the Republic of Indonesia.

The reasons for the dissolution of political parties by the Constitutional Court are a form of limitation of the law on the implementation of the right to freedom of association so that political parties that violate the stipulated restrictions are sanctioned by the Constitutional Court. Restrictions on the implementation of freedom of association as human rights have also been regulated in Article 28J of the 1945 Constitution of the Republic of Indonesia concerning basic obligations in the implementation of human rights. The implementation of human rights must pay attention to the basic obligations contained in Article 28J of the 1945 Constitution of the Republic of Indonesia as a form of recognizing and respecting the human rights of other individuals, do not let human rights violate the rights of others. The basic obligation in implementing human rights is the obligation to respect the rights of other individuals and the obligation to comply with the restrictions in the legislation in force.

Restrictions on freedom of association through political parties in the form of restrictions set forth in the law with sanctions in the form of dissolution by the Constitutional Court from a human rights perspective are permissible. It has been stated earlier that in Article 4 of ICCPR 1966 the right to freedom of association is a right that can be deferred (derogable rights) so that restrictions are possible. Restrictions on freedom of association must be regulated in law as mandated by ICCPR 1966. Thus, the dissolution of political parties by the Constitutional Court is a sanction for violations committed by the political party concerned against the restrictions set forth in the law on freedom of association as derogable right. Restrictions on freedom of association through political parties regulated in law need to be carried out to respect the rights and freedoms of others, maintain, the order in society, nation, and state, and especially to maintain the integrity of the Unitary Republic of Indonesia based on Pancasila ideology and 1945 Constitution. the exercise of freedom of association through political parties in the name of democracy can jeopardize the unity and unity, and the integrity of the Unitary Republic of Indonesia.

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