



## Political Parties' Right To Recall Against Legislative Members In The Perspective Of A Democratic Rule Of Law

Asriyani<sup>1</sup>, Mohamad Safrin<sup>2</sup>, Muhammad Naufal Muflih<sup>3</sup>

<sup>1</sup> Faculty of Law, Legal Sciences, Tadulako University, Indonesia [anchinatsir88@gmail.com](mailto:anchinatsir88@gmail.com)

<sup>2</sup> Faculty of Law, Legal Sciences, Tadulako University, Indonesia

<sup>3</sup> Faculty of Law, Legal Sciences, Tadulako University, Indonesia

### ABSTRACT

*This article is entitled "Examination of the Recall Rights of Political Parties Against Legislative Members in the Perspective of a Democratic Rule of Law (Case Study of Regional People's Representative Assembly in Central Sulawesi)", where the author will analyze the right of recall or a right that political parties have to temporarily dismiss legislative members at the suggestion of a political party which supports it concerning the principles of a democratic rule of law. The legal issue raised in this writing is "Is the Right to Recall Political Parties Against Legislative Members Compliant with the Principles of a Democratic Rule of Law?". This article uses normative juridical and empirical juridical research methods by analyzing the rights contained in the Constitution of the Republic of Indonesia and their relationship to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Representative Council Regional People, especially those related to the temporary dismissal of legislative members proposed by political parties, in this case is contained in Article 239 paragraph (2) letter "d". In this article, the recall rights of political parties follow the principles of the rule of law. Recalls are needed to monitor political parties over their members who have served as members of the legislature. However, its application still requires clarity regarding matters that result in the recall of a legislative member by his political party.*

### Cite this paper

Asriyani, Safrin, M., & Muflih, M. N. (2024). Political Parties' Right To Recall Against Legislative Members In The Perspective Of A Democratic Rule Of Law. *Widya Yuridika: Jurnal Hukum*, 7(2). doi: <https://doi.org/10.31328/wy.v7i2.5083>

### MANUSCRIPT INFO

#### Manuscript History:

Received:

2023-10-20

Accepted:

2024-07-04

Corresponding Author:

Asriyani,

[anchinatsir88@gmail.com](mailto:anchinatsir88@gmail.com)

#### Keywords:

*Right of Recall; Political Parties; Legislative Members; Democratic Rule of Law*



Widya Yuridika: Jurnal Hukum is Licensed under a Creative Commons Attribution-ShareAlike 4.0 International License

**Layout Version:**

v.7.2024

### PRELIMINARY

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), especially Article 22B, emphasizes that "Members of the People's Representative Council can be dismissed from their positions, the conditions and procedures for which are regulated by law". This article is the basis for regulating the recall rights of political parties. Article 239 and Article 405 of Law Number 17 of 2014 concerning the People's Consultative Assembly, People's Representative Council, Regional Representative Council, and Regional People's Representative Council (UU. No. 17 of 2014 concerning the MPR, DPR, DPD, DPRD) contain

norms regarding dismissal Interim members of the People's Representative Council (DPR) and district/city Regional People's Representative Council (DPRD). However, in this case, the author focuses on Article 239 paragraph (2), letter "d" and Article 405 paragraph (2), letter "e", whose editorial reads "members of the DPR and district/city DPRD can be dismissed if proposed by their political party following regulations legislation". Both articles have the same editorial. However, 239 paragraph (2) letter "d" contains interim dismissals for DPR members. Meanwhile, article 405, paragraph (2), letter "e" contains interim dismissals for district/city DPRD members. From the provisions of the two articles above, it is very clear that parties are allowed to temporarily dismiss their members who serve in the legislature.

The recall is Generally understood as recalling members of the DPR to be dismissed and, therefore, replaced with other members before the end of the term of office of the recalled DPR member.<sup>1</sup> The right of recall by political parties is a means provided by law to replace political party members who sit as legislature members temporarily. <sup>2</sup> His political party can recall a legislative member as regulated in the law.

A legislative member has a very close relationship with his political party. From the beginning of the nomination to becoming a legislature member until being elected and occupying a position in the legislature, political parties play a significant role in this process. <sup>3</sup> A person cannot become a member of the legislature if he does not participate in the nomination in the general election. Meanwhile, one of the conditions for participating in the nomination of legislative members is that a political party must nominate them. <sup>4</sup> Thus, someone not supported by a political party cannot participate in parliamentary nominations. This has been stated in Article 7 of Law Number 8 of 2012 concerning General Elections of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council, which reads, "Election participants for the election of members of the DPR, provincial DPRD and district/city DPRD are parties political". <sup>5</sup> In other words, political parties are the participants in the election. From the political parties participating in the election, nominate someone who has become a cadre in a political party to serve as the people's representative in parliament.

The role of political parties dramatically influences the development of the Republic of Indonesia today. <sup>6</sup> Each political party has goals and functions bound by Article 10 and Article 11 of Law Number 2 of 2008 concerning Political Parties. With the provisions of the objectives and functions contained in these two articles, political parties are very much in control of the country's future development. There are several views regarding political

---

<sup>1</sup> Stevanus Evan Setio, "Hak Recall Partai Politik Terhadap Keanggotaan DPR Dalam Sistem Ketatanegaraan Indonesia," 2013, 1.

<sup>2</sup> Salma Sabila, "Implementasi Penggantian Antarwaktu Anggota Dewan Perwakilan Rakyat Berdasarkan Undang-Undang Nomor 17 Tahun 2014 Tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah Dan Dewan Perwakilan Rakyat Daerah" (FAKULTAS HUKUM UNIVERSITAS PASUNDAN, 2021), 48, <http://repository.unpas.ac.id/54797/>.

<sup>3</sup> Benito Asdhie Kodiyat, "Fungsi Partai Politik Dalam Meningkatkan Partisipasi Pemilih Pada Pemilihan Umum Kepala Daerah Di Kota Medan," *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 5, no. 1 (2019): 5, <https://jurnal.umsu.ac.id/index.php/edutech/article/view/2756>.

<sup>4</sup> Fitriyah Fitriyah, "Partai Politik, Rekrutmen Politik Dan Pembentukan Dinasti Politik Pada Pemilihan Kepala Daerah (Pilkada)," *Politika: Jurnal Ilmu Politik* 11, no. 1 (2020): 15, <https://ejournal.undip.ac.id/index.php/politika/article/view/28687>.

<sup>5</sup> Mustanul Sania Huda, "Implementasi Undang-Undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah (Studi tentang Keterwakilan Perempuan dalam Politik di Kabupaten Magetan)" (Universitas Brawijaya, 2014), 30, <http://repository.ub.ac.id/id/eprint/116230/>.

<sup>6</sup> Fathan Ali Mubiina, "Pola Hubungan Fraksi Dengan Lembaga Dewan Perwakilan Rakyat Republik Indonesia Pasca Reformasi," *Diktum: Jurnal Ilmu Hukum* 8, no. 1 (2020): 37, <https://doi.org/10.24905/diktum.v8i1.80>.

parties. According to Schattscheider (1942), "Political Parties created democracy" <sup>7</sup>. It is political parties that shape democracy, not the other way around. Therefore, political parties are pillars or poles that are necessary and significant to strengthen their position (the degree of institutionalization) in every democratic political system. The degree of political party determines the quality of democratization of a country's political life.<sup>8</sup>

As the author stated, the right of recall by political parties is a means provided by law to replace political party members who sit as legislative members occasionally. The close relationship between political party members who have become legislature members and their political parties cannot be denied.<sup>9</sup> However, when a member of a political party is elected in a general election and occupies a position as a member of the legislature, this close relationship must be put aside a little. This is because the status attached to legislative members is no longer in the name of a political party. But in the name of the people. Because he has been given legitimacy by the people who chose him as the channel of their aspirations.

Based on the background above, the identification of the problem that is the author's focus is "What is the use of the right of recall political parties towards legislative members are in accordance with the principles of a democratic rule of law?"

## METHOD

The method used in this research is a normative juridical research method because what will be studied is the problem of the relationship and implications of the use of political parties' right to recall against a democratic legal state, where the research uses data obtained from primary and secondary legal materials.

## RESULTS AND DISCUSSION

### Testing of the Principles of a Democratic Legal State on the Implementation of the Right to Recall.

Democracy comes from the Greek words *demos*, which means people, and *kratos*, which means government.<sup>10</sup> Democracy is a form or mechanism of a country's government system to realize popular sovereignty ( citizen power ) over the country to be carried out by the government of that country. However, some interpret democracy as government by the people for the people or government by those who are governed.<sup>11</sup>

Democracy is a pattern of government where the power to govern comes from those who are governed. Democracy is also a pattern that actively involves all members of society in the decisions taken by them and is also given authority. So, the government's legitimacy is the will of the people who elect and control it. The people choose their representatives freely, and it is through these representatives that the government can run. In addition, in a

<sup>7</sup> Mirawati Saktiana and Zudan Arif Fakhrulloh, "The Query Of The Sanctions For Enforcement Of Money Politics In Indonesia," *Unram Law Review* 6, no. 2 (2022): 3, <https://doi.org/10.29303/ulrev.v6i2.206>.

<sup>8</sup> Anna Zagrebina, "Concepts of Democracy in Democratic and Nondemocratic Countries," *International Political Science Review* 41, no. 2 (March 2020): 178, <https://doi.org/10.1177/0192512118820716>.

<sup>9</sup> Ulrich Sieberer, "Party unity in parliamentary democracies: A comparative analysis," in *The Impact of Legislatures*, 1st ed. (London: Routledge, 2020), 156, <https://api.taylorfrancis.com/content/chapters/edit/download?identifierName=doi&identifierValue=10.4324/9781003033783-8&type=chapterpdf>.

<sup>10</sup> Tedi Abdul Fariz et al., "Demokrasi Pancasila Dalam Isu Ekonomi," *Advanced In Social Humanities Research* 1, no. 5 (2023): 740.

<sup>11</sup> Tedi Abdul Fariz et al., "Demokrasi Pancasila Dalam Isu Ekonomi | Advanced in Social Humanities Research" 1, no. 5 (June 6, 2023): 47, <https://adshr.org/index.php/vo/article/view/82>.

country with a large population, citizens participate in government through approval and criticism, which can be expressed freely, especially in the mass media.<sup>12</sup>

In the implementation of recalling political parties for their members who serve in the legislature in Indonesia, this often occurs due to ideological differences between political parties and their party members who serve as members of the legislature. This can be seen when the legislative member's opinion differs from the opinion of his political party when voting in the legislative plenary session. In fact, if we refer to the basic principle of the rule of law according to Jimly Asshiddiqie<sup>13</sup> in number (1) "Supremacy of Law" which the author has explained in a theoretical framework, in essence, the highest leader in a State is not man. But instead, the constitution of a country. The constitution of the Republic of Indonesia, in this case, the 1945 Constitution of the Republic of Indonesia, guarantees freedom of expression for everyone. This is as stated in Article 28E paragraph (3) that "everyone has the right to freedom of association, assembly and expression of opinion.

Further, if we look at the principles of the rule of law, according to Friedrich Julius Stahl, a state of the law in the first point emphasizes the existence of recognition and protection of human rights.<sup>14</sup> This is also in line with the basic principles of the rule of law according to Jimly Asshiddiqie, especially number nine (9), "Protection of Human Rights". Protection of human rights is closely related to implementing the right to recall within the State of Indonesia. Quite a few people think that the right of recall, which is the right of a political party to temporarily dismiss its members who are currently serving as members of the legislature on the pretext that they conflict with the party's ideology, is contrary to the principles of the rule of law, especially in terms of protecting human rights. Where the right referred to here is the right to express an opinion, with the right of recall, human rights regarding freedom of expression are indirectly violated. This is because legislative members who want to voice the people's aspirations feel constrained and are afraid of being recalled by their political party if these aspirations conflict with the ideology of their political party. Because this could be the reason for the recall of the legislative member by his political party.

Apart from the concrete reasons contained in the law relating to the recall rights of political parties, there is also a need for transparency or openness of political parties regarding the recall that they have given to their members who serve as members of the legislature. This will also give the public a good impression of political parties because the recall of legislative members is carried out openly. This is also closely related to the basic principle of the rule of law according to Jimly Asshiddiqie, which the author explained previously in a theoretical framework, namely number (12) relating to "transparency and social control".

### **The Right to Recall of Legislative Members Concerns Constitutional Rights.**

The supremacy of the constitution, a doctrine in government administration, relies on recognising the constitution as the highest law, which is the source of legitimacy for all policies in the legal, economic, social and political fields. In guarding the constitution and carrying out supervision over legislative actions in the form of testing the constitutionality of the resulting legislation, measured from constitutional norms in general, the norms in the

---

<sup>12</sup> Muhammad Rizal, "Presidential Threshold 20% Ditinjau Menurut Prinsip Demokrasi" (FAKULTAS SYARIAH DAN HUKUM UNIVERSITAS ISLAM NEGERI AR-RANIRY BANDA ACEH, 2021), 67, <https://repository.ar-raniry.ac.id/id/eprint/19843/>.

<sup>13</sup> Jimly Asshiddiqie, *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)* (Jakarta Timur: Sinar Grafika, 2022), 280.

<sup>14</sup> Asriyani Asriyani, Adiesty Septhiany P. Syamsuddin, and Abd Halik, "Fulfillment of The Rights of Accessibility to Population and Civil Registration for People with Disabilities," *Wajah Hukum* 7, no. 1 (2023): 85, <https://doi.org/10.33087/wjh.v7i1.1132>.

constitution regulate the organization of institutional authority and their relationship with each other, which gives rise to authority or constitutional authorities but also regulates the relationship between the State and citizens in the context of the State's authority vis-à-vis the constitutional rights of the people.<sup>15</sup>

Constitutional rights are guaranteed in and by the 1945 Constitution of the Republic of Indonesia.<sup>16</sup> After the amendment to the 1945 Constitution of the Republic of Indonesia, the Indonesian state constitution, human rights principles have been included in the Indonesian constitution as a characteristic of modern constitutional principles.<sup>17</sup> Therefore, the human rights principles contained in the 1945 Constitution of the Republic of Indonesia are the constitutional rights of Indonesian citizens.

The constitutional rights of citizens must be guaranteed in the constitution as a form of recognition of human rights and the existence of an independent judiciary that is not influenced by the authorities, and all government actions must be based on law. Human Rights is a set of rights that are inherent in the essence and existence of every human being as a creature of God Almighty and are His gifts that must be respected, upheld and protected by the State, Law, Government and every person, for the sake of honour. And protection of human dignity.<sup>18</sup> This means that what is meant by human rights are the rights inherent in every human person.

Constitutional rights closely related to the right to recall political parties are the right to express thoughts and attitudes and the right to freedom of association, assembly and expression of opinions.<sup>19</sup> This right has been included in the 1945 Constitution of the Republic of Indonesia in Article 28E paragraph (2) and paragraph (3). The editorial of this article is as follows: "(2) Everyone has the right to freedom of belief, expression of thoughts and attitudes, following his conscience." (3) Everyone has the right to freedom of association, assembly and expression of opinion." The connection with the recall rights of political parties is in the law. No. 17 of 2014 Concerning the MPR, DPR, DPD, DPRD in Article 239 paragraph (2) letter "d" and Article 405 paragraph (2) letter "e" whose editorial reads "members of the DPR and district/city DPRD can be dismissed if proposed by political parties following statutory regulations." The right of political parties to recall or temporarily dismiss their members who serve as legislature members has been without concrete basis. So, in its application, political parties act arbitrarily in temporarily dismissing their members who serve as legislature members. This often happens because legislative members have different opinions or are not aligned with their political parties.

In 2006, this issue was used as material in the request for review of Article 85 paragraph (1) letter c of Law Number 22 of 2003 concerning the Composition and Position of the People's Consultative Assembly, People's Representative Council, Regional Representative Council and Regional People's Representative Council; and Article 12 letter b of Law Number 31 of 2002 concerning Political Parties against the 1945 Constitution of the Republic of Indonesia, which was submitted by a (former) member of the People's

<sup>15</sup> Leli Tibaka and Rosdian Rosdian, "The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11, no. 3 (2017): 270, <http://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1141>.

<sup>16</sup> Diya Ul Akmal and Dea Linta Arlianti, "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi," *Mulawarman Law Review* 7, no. 1 (2022): 55, <https://doi.org/10.30872/mulrev.v7i1.780>.

<sup>17</sup> Triwahyu Budi Utomo, "ANALISA KRITIS: HAK KONSTITUSIONAL PROFESI GURU," *Academy of Education Journal* 12, no. 1 (2021): 117, <https://doi.org/10.47200/aej.v12i1.442>.

<sup>18</sup> Mikho Ardinata, "Tanggung jawab negara terhadap jaminan kesehatan dalam perspektif hak asasi manusia," *Jurnal Ham* 11, no. 2 (2020): 320, <http://dx.doi.org/10.30641/ham.2020.11.319-332>.

<sup>19</sup> Mara Ongku Hsb, "Ham Dan Kebebasan Berpendapat Dalam UUD 1945," *Al WASATH Jurnal Ilmu Hukum* 2, no. 1 (2021): 37, <https://doi.org/10.47776/alwasath.v2i1.135>.

Representative Council named Djoko Edhi Soetjipto Abdurahman to the Indonesian Constitutional Court.<sup>20</sup> The recall was submitted to the Constitutional Court by one of the DPR members, Djoko Edhi Soetjipto Abdurahman. Djoko Edhie submitted a material review, especially regarding the provisions of Article 85 paragraph (1) letter c of Law Number 22 of 2003 concerning Subsuk and Article 12 letter b of Law Number 31 of 2002 concerning Political Parties, which was promulgated on July 31 2003.

Article 85 paragraph (1) letter c of the Susduk Law states, "Members of the House of Representatives resign temporarily because: c. proposed by the political party concerned." Meanwhile, Article 12 letter b of the Political Party Law states, "Members of a political party who are members of a people's representative institution can have their membership of a people's representative institution terminated if: b. dismissed from membership of the political party concerned for violating the articles of association and bylaws. "

The House of Representatives provided information almost the same as the government's. The House of Representatives, through its proxy, namely Nursyahbani Kantjasungkana, provided information specifically relating to the history and spiritual atmosphere when the norms of Article 12 Letter B were formed. Nursyahbani explained that during the discussion of the situation, the members of the People's Representative Council were anxious because there was a case where a political party member was dismissed but could not be recalled at that time. At the same time, the public demanded to have members of the People's Consultative Assembly, People's Representative Council, Regional Representative Council and the Regional People's Representative Council, which is accountable to the people. Members of the People's Representative Council who are deemed to lack commitment or have violated the constitution, articles of association and bylaws of each member of the political party must go through an examination and verification process regarding alleged violations or obligations imposed by members of the party. In general, parties have an Honorary Body. This shows that termination as a member of a political party, which causes a recall as regulated by law or a change of time, cannot be done arbitrarily and, of course, must go through the law. The People's Representative Council believes that Article 85 paragraph (1) letter c of the Law on the Implementation of the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council and Article 12 letter b of the Political Party Law do not conflict with Article 22E paragraph (1) and (2) and Article 28 of the 1945 Constitution of the Republic of Indonesia.

Meanwhile, in the trial, the Constitutional Court presented several experts whose opinions differed. The questioned experts were Harun Al Rasyid, Denny Indrayana, Arbi Sanit, and Mahfud MD. Three experts, Harun Al Rasyid, Denny Indrayana, and Arbi Sanit, believe that recall is a provision contrary to the constitution and, therefore, must be declared to have no binding legal force. The expert argues that the recall contradicts political rights and expression rights. With the recall, political party members do not represent the people but represent political parties, and this means denying the meaning of the institution of the People's Representative Council, which is an extension of the People's Representative Council and not the political party representative council.

Meanwhile, there are experts who think otherwise. Mahfud MD actually believes that the 1945 Constitution of the Republic of Indonesia, namely Article 22B, states that the issue

---

<sup>20</sup> Lukman Nul Hakim, "Analisis Terhadap Perwujudan Kedaulatan Rakyat Melalui Recall Rakyat Terhadap Anggota Legislatif Terpilih" (PhD Thesis, Universitas Islam Sultan Agung (Indonesia), 2021), 21, <https://search.proquest.com/openview/48638e8b0426782302879bd22e94f92a/1?pq-origsite=gscholar&cbl=2026366&diss=y>.

of dismissal of members of the People's Representative Council is regulated by law. Meanwhile, the 1945 Constitution of the Republic of Indonesia does not mention the types of measures regarding why people are dismissed but leaves it to the law. Due to its open nature, namely submitting to the law, the Constitutional Court can only decide whether it conflicts with the orders of the 1945 Constitution of the Republic of Indonesia. The problem faced by the applicant is not a conflict between the law and the 1945 Constitution of the Republic of Indonesia but a conflict of AD/ART, perhaps with the law, and according to experts, there are no direct constitutional rights.

The Constitutional Court, in its decision Number 008/PUU-IV/2006, which was read out on September 21 2006, decided to reject all of the applicant's petitions.<sup>21</sup> The Constitutional Court believes that the right of recall is not essentially contrary to democracy but is intended to maintain the relationship between those represented and those who represent them. In the practice of representative democracy, various variations in using the right of recall can occur. This does not mean eliminating the meaning of a representative democratic system. If there are irregularities in the application of the recall right, then this is not a system error, so it is not the system that must be sacrificed but rather the practice that needs to be corrected.

### **Juridical and Sociological Consequences of Using the Right to Recall.**

The recall by political parties of membership in the People's Representative Council is regulated in Article 239 paragraph (2) letter d and letter g of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council. The editorial of the article in question is proposed by the political party following statutory regulations and dismissed as a member of a political party following statutory provisions.

Article 16 paragraph (3) of Law Number 2 of 2011 concerning Political Parties stipulates, "If the member of the Political Party who is dismissed is a member of the people's representative institution, the dismissal from membership of the Political Party is followed by dismissal from membership in the people's representative institution following statutory regulations. -invitation".<sup>22</sup>

The word "legislative regulations" creates a vague meaning or is too broad ( blank delegation ) because it does not explain in detail, giving rise to various interpretations that confuse thinking. Legal interpretation is bound to general principles, including the principle of proportionality, subsidiary principle and appropriateness principle.<sup>23</sup> Apart from that, various types of interpretive teachings have also developed, which have been developed by legal experts. According to the principle of proportionality, judges, in interpreting a legal provision, must adhere to a balance between individual and collective interests, rights and obligations, and between materialism and spiritualism. The subsidiary principle states that the provisions are interpreted only if the regulations are unclear. Clear regulations do not need to be interpreted any further. In the proper principle, interpretation is carried out by

<sup>21</sup> Yudhia Perdana, "Politik Hukum Pemberhentian Anggota Dewan Perwakilan Rakyat Republik Indonesia Oleh Partai Politik Berdasarkan Ketentuan Pasal 16 Ayat (1) Huruf D Undang-Undang Partai Politik" (PhD Thesis, Riau, Universitas Islam Riau, 2022), 112, <http://repository.uir.ac.id/id/eprint/13545>.

<sup>22</sup> Taufikurrahman Taufikurrahman, "Legitimasi Pemberhentian Keanggotaan DPR/DPRD Oleh Partai Politik Hasil Pemilu Legislatif Dengan Sistem Proporsional Terbuka," *NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam* 15, no. 1 (2018): 94, <https://doi.org/10.19105/nuansa.v15i1.1913>.

<sup>23</sup> Syed Raza Shah Gilani, Ilyas Khan, and Shehla Zahoor, "The Historical Origins of the Proportionality Doctrine as a Tool of Judicial Review: A Critical Analysis," *Research Journal of Social Sciences and Economics Review* 2, no. 1 (2021): 253, [https://doi.org/10.36902/rjsser-vol2-iss1-2021\(251-258\)](https://doi.org/10.36902/rjsser-vol2-iss1-2021(251-258)).

adhering to the principles of morality. This means that an interpretation must not conflict with religious, moral, and other social norms.

The blurring of legal norms provides an opening for political parties to act arbitrarily by recalling members of their political parties currently serving as members of the legislature.

In Indonesia, regulations regarding freedom of opinion are contained in the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph (3) contains freedom of opinion, stipulating, "Everyone has the right to freedom of association, assembly and expression of opinion". This is a provision that no restrictions exist on freedom of association, assembly and expression of opinion. Expressing opinions is one of the fundamental rights of citizens who must be guaranteed to express themselves freely. All these rights are based on the principle of equal treatment and non-discrimination.

Political rights must be written into the constitution. One of the contents of the constitution is the recognition and respect for fundamental rights or human rights, which are then accepted as part of the constitutional rights of citizens. For this reason, one of the Constitution's primary functions is to protect individual citizens and their constitutional rights.<sup>24</sup>

If political parties recall members of the People's Representative Council, their political rights and obligations as members of the People's Representative Council will be limited throughout their term of office. Using a recall right by a political party must be an action according to the law so that it cannot simultaneously result in an action that violates the law. Restrictions on political rights carried out by political parties on the constitutional rights of citizens guaranteed by the constitution constitute a violation of the human rights of citizens.

The juridical consequence of using a political party Recall against its members who have served as legislature members is that it provides space for the political party to act arbitrarily. This is because there are no concrete regulations that determine the things that could cause a legislative member to be eligible for recall. Because in Law. No. 17 of 2014 Concerning the MPR, DPR, DPD, DPRD not explaining in detail what can cause the temporary dismissal of legislative members. In Article 239 paragraph (2), point "d" (proposed by the political party following the provisions of statutory regulations) and point "g" (dismissed as a member of a political party following the provisions of statutory regulations) do not provide a detailed explanation relating to interim dismissal of the legislative member. The editorial is "proposed by the political party", which is included in the law. No. 17 of 2014 Regarding the MPR, DPR, DPD, DPRD only as a means by political parties to dismiss legislative members. Because the matters or debates on the political party's proposal are not included, this is where the political party seems arbitrary in dismissing its members who serve as members of the legislature.

Recalls by political parties also have sociological impacts or consequences for the legislative members themselves. The sociological consequence is the fear of legislative members expressing their opinions. This is because the legislative member fears being recalled by his political party. This is because no concrete reasons could cause the legislative member to be recalled by his political party.

Recall is a means of monitoring political parties for their members who serve as legislature members. This is necessary, considering that political parties are a forum for

---

<sup>24</sup> I Dewa Gede Palguna, *Constitutional Complaint*, Jakarta (Jakarta: Sinar Grafika, 2013), 78, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=852313>.

legislative members to participate in general elections. However, to make recalls a suitable means of supervision. Following the principles of the rule of law, there needs to be a more concrete explanation regarding political parties' recalls of their members in the legislature.

## CLOSING

Recall rights of political parties are following the principles of the rule of law. Recalls are needed to monitor political parties over their members who have served as members of the legislature. However, its application still requires clarity regarding matters that result in the recall of a legislative member by his political party. Suppose the things that cause a legislative member to be recalled by his political party are not concreted. In that case, the juridical consequences allow political parties to act arbitrarily against their legislative members in terms of temporary dismissal and make legislative members afraid to express opinions in carrying out their duties. his duties as a representative of the people.

Based on the above conclusions, the writer can suggest to the DPR and the Government that the substance of Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council, especially regarding the right to recall, should be changed were made.

## BIBLIOGRAPHY

### Books :

I Dewa Gede Palguna. *Constitutional Complaint*. Jakarta. Jakarta: Sinar Grafika, 2013. <https://opac.perpusnas.go.id/DetailOpac.aspx?id=852313>.

Jimly Asshiddiqie. *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)*. Jakarta Timur: Sinar Grafika, 2022.

### Journal Manuscript:

Anna Zagrebina. "Concepts of Democracy in Democratic and Nondemocratic Countries." *International Political Science Review* 41, no. 2 (March 2020): 174–91. <https://doi.org/10.1177/0192512118820716>.

Asriyani Asriyani, Adiesty Septhiany P. Syamsuddin, and Abd Halik. "Fulfillment of The Rights of Accessibility to Population and Civil Registration for People with Disabilities." *Wajah Hukum* 7, no. 1 (2023): 84–91. <https://doi.org/10.33087/wjh.v7i1.1132>.

Benito Asdhie Kodiyat. "Fungsi Partai Politik Dalam Meningkatkan Partisipasi Pemilih Pada Pemilihan Umum Kepala Daerah Di Kota Medan." *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 5, no. 1 (2019). <https://jurnal.umsu.ac.id/index.php/edutech/article/view/2756>.

Diya Ul Akmal and Dea Linta Arlianti. "Dinamika Perlindungan Hak Konstitusional Warga Negara Dalam Implementasi Pengujian Undang-Undang di Mahkamah Konstitusi." *Mulawarman Law Review* 7, no. 1 (2022): 49–70. <https://doi.org/10.30872/mulrev.v7i1.780>.

Fitriyah Fitriyah. "Partai Politik, Rekrutmen Politik Dan Pembentukan Dinasti Politik Pada Pemilihan Kepala Daerah (Pilkada)." *Politika: Jurnal Ilmu Politik* 11, no. 1 (2020): 1–17. <https://ejournal.undip.ac.id/index.php/politika/article/view/28687>.

- Leli Tibaka and Rosdian Rosdian. "The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 11, no. 3 (2017): 266–88. <http://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1141>.
- Lukman Nul Hakim. "Analisis Terhadap Perwujudan Kedaulatan Rakyat Melalui Recall Rakyat Terhadap Anggota Legislatif Terpilih." PhD Thesis, Universitas Islam Sultan Agung (Indonesia), 2021. <https://search.proquest.com/openview/48638e8b0426782302879bd22e94f92a/1?pq-origsite=gscholar&cbl=2026366&diss=y>.
- Mara Ongku Hsb. "Ham Dan Kebebasan Berpendapat Dalam UUD 1945." *Al WASATH Jurnal Ilmu Hukum* 2, no. 1 (2021): 29–40. <https://doi.org/10.47776/alwasath.v2i1.135>.
- Mikho Ardinata. "Tanggung jawab negara terhadap jaminan kesehatan dalam perspektif hak asasi manusia." *Jurnal Ham* 11, no. 2 (2020): 319–32. <http://dx.doi.org/10.30641/ham.2020.11.319-332>.
- Mirawati Saktiana and Zudan Arif Fakhrulloh. "The Query Of The Sanctions For Enforcement Of Money Politics In Indonesia." *Unram Law Review* 6, no. 2 (2022). <https://doi.org/10.29303/ulrev.v6i2.206>.
- Mubiina, Fathan Ali. "Pola Hubungan Fraksi Dengan Lembaga Dewan Perwakilan Rakyat Republik Indonesia Pasca Reformasi." *Diktum: Jurnal Ilmu Hukum* 8, no. 1 (2020): 36–69. <https://doi.org/10.24905/diktum.v8i1.80>.
- Muhammad Rizal. "Presidential Threshold 20% Ditinjau Menurut Prinsip Demokrasi." FAKULTAS SYARI'AH DAN HUKUM UNIVERSITAS ISLAM NEGERI AR-RANIRY BANDA ACEH, 2021. <https://repository.ar-raniry.ac.id/id/eprint/19843/>.
- Mustanul Sania Huda. "Implementasi Undang-Undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah, dan Dewan Perwakilan Rakyat Daerah (Studi tentang Keterwakilan Perempuan dalam Politik di Kabupaten Magetan)." Universitas Brawijaya, 2014. <http://repository.ub.ac.id/id/eprint/116230/>.
- Sabila, Salma. "Implementasi Penggantian Antarwaktu Anggota Dewan Perwakilan Rakyat Berdasarkan Undang-Undang Nomor 17 Tahun 2014 Tentang Majelis Permusyawaratan Rakyat, Dewan Perwakilan Rakyat, Dewan Perwakilan Daerah Dan Dewan Perwakilan Rakyat Daerah." FAKULTAS HUKUM UNIVERSITAS PASUNDAN, 2021. <http://repository.unpas.ac.id/54797/>.
- Setio, Stevanus Evan. "Hak Recall Partai Politik Terhadap Keanggotaan DPR Dalam Sistem Ketatanegaraan Indonesia," 2013.
- Syed Raza Shah Gilani, Ilyas Khan, and Shehla Zahoor. "The Historical Origins of the Proportionality Doctrine as a Tool of Judicial Review: A Critical Analysis." *Research Journal of Social Sciences and Economics Review* 2, no. 1 (2021): 251–58. [https://doi.org/10.36902/rjsser-vol2-iss1-2021\(251-258\)](https://doi.org/10.36902/rjsser-vol2-iss1-2021(251-258)).
- Taufikkurrahman Taufikkurrahman. "Legitimasi Pemberhentian Keanggotaan DPR/DPRD Oleh Partai Politik Hasil Pemilu Legislatif Dengan Sistem Proporsional Terbuka." *NUANSA: Jurnal Penelitian Ilmu Sosial dan Keagamaan Islam* 15, no. 1 (2018): 91–124. <https://doi.org/10.19105/nuansa.v15i1.1913>.
- Tedi Abdul Fariz, Ganjar Nugraha, M Rayhan AlFauzan, and Didiet Mugina Sumaryono. "Demokrasi Pancasila Dalam Isu Ekonomi." *Advanced In Social Humanities Research* 1, no. 5 (2023): 737–42.

- Tedi Abdul Fariz, Ganjar Nugraha, M. Rayhan AlFauzan, and Didiet Mugina Sumaryono. "Demokrasi Pancasila Dalam Isu Ekonomi | Advanced in Social Humanities Research" 1, no. 5 (June 6, 2023). <https://adshr.org/index.php/vo/article/view/82>.
- Triwahyu Budi Utomo. "ANALISA KRITIS: HAK KONSTITUSIONAL PROFESI GURU." *Academy of Education Journal* 12, no. 1 (2021): 114–34. <https://doi.org/10.47200/aoej.v12i1.442>.
- Ulrich Sieberer. "Party unity in parliamentary democracies: A comparative analysis." In *The Impact of Legislatures*, 1st ed., 141–69. London: Routledge, 2020. <https://api.taylorfrancis.com/content/chapters/edit/download?identifierName=doi&identifierValue=10.4324/9781003033783-8&type=chapterpdf>.
- Yudhia Perdana. "Politik Hukum Pemberhentian Anggota Dewan Perwakilan Rakyat Republik Indonesia Oleh Partai Politik Berdasarkan Ketentuan Pasal 16 Ayat (1) Huruf D Undang-Undang Partai Politik." PhD Thesis, Universitas Islam Riau, 2022. <http://repository.uir.ac.id/id/eprint/13545>.

### **Legislation.**

Law Number 2 of 2008 concerning Political Parties.

Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.

Law number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council and Members of the Regional People's Representative Council, article 7.

Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council.

