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## The Authority of the Prosecutors' Office Represents the Government in Filing Applications for Dissolution of Political Parties in the Constitutional Court

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### **Abstract**

*The trial for the dissolution of political parties is a court that integrates functions in criminal justice with the constitutional court in the Constitutional Court. Only the Prosecutors' Office as a government agency and law enforcement agency through the Prosecutor's prototype which includes the Intelligence Prosecutors, Investigating Prosecutors, Fingerprinting Prosecutors, Public Prosecutors, State Attorney, Executor Attorney, Asset Watcher Attorney under the Attorney General who is able to exercise the authority of representing the government in applying for the dissolution of political parties in the Constitutional Court as an integrative authority. The State Administration Decree is the forerunner of the Decree of the Minister of Law and Human Rights which ratifies a political party as a legal entity of a political party which is the object of cancellation in the request to dissolve a political party, so based on Article 30 paragraph (2) of Law 16/2004 jo. Article 68 paragraph (1) of Law 24/2003 jo. Article 3 paragraph (1) of PMK 12/2008, the Prosecutors' Office may represent the government in proceeding with the Constitutional Court. To attract criminal and legal liability for legal entities of political parties that commit criminal acts and contravene the 1945 Constitution, prosecutors can use the doctrine of strict liability, vicarious liability, and identification so that political parties can be liable for criminal liability through their managers who commit extra ordinary crime in a structured, systematic and massive manner. The nature of the submission to prosecute the dissolution of unconstitutional political parties by the Prosecutors' Office because of the interests of the state to uphold the law, uphold the authority of the government, protect the public interest, and save democracy.*

**Keywords:** Authority, prosecutors' office, dissolution of political parties, constitutional court

### **1. Introduction**

This paper is a representation of the writer's anxiety as prosecutors, legal academics and legal practitioners who see the reality of the Indonesian state as a democratic state of law with political parties that have a noble duty to bridge the people and government in order to prosper democracy, it even shows the rampant actions of political parties through the management of political parties as well as members of political parties who are either legislative officials, executive officials, or judicial officials, committing criminal acts of corruption in the interests of political parties. The reality of the democratic rule of law is increasingly complicated by the way of judging the Republic of Indonesia Attorney's institution (hereinafter referred to as the Prosecutors' Office) as a government and law enforcement agency (dual obligation) that has not yet responded to the law enforcement Article 30 paragraph (2) of Law 16/2004 jo. Article 68 paragraph (1) of Law 24/2003 jo. Article 3 paragraph (1) of PMK 12/2008 which gives attribution authority to the Government which is represented by the President as the sole legal standing of the applicant may assign the Attorney General through a special power of attorney to represent the government in submitting an application for the dissolution of political parties in the Constitutional Court against political parties that carry out political party activities that 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; or ideology, principles, goals, programs of political parties contrary to the 1945 Constitution of the Republic of Indonesia; or adhere to and develop and spread the teachings or understandings of communism/Marxism-Leninism.

*In concreto*, there is no Prosecutor's regulation or instructions for implementing the authority of the Prosecutors' Office representing the government in applying for the dissolution of political parties in the Constitutional Court. In

addition, there are still weak legal arrangements for the dissolution of political parties, especially the reasons for dissolution in Law 2/2008 which are in harmony with Law 23/2003 and PMK 12/2008. This has the effect of not maximally strengthening the authority of the Prosecutors' Office in the procedure for dissolving political parties in the Constitutional Court. Potential to degrade the authority to dissolve political parties which is an integrative and exclusive authority if the strengthening of the legal substance and legal structure of the Prosecutors' Office is not carried out.

Prior to this writing, the author did not get the results of research examining the problem of the authority of the Prosecutors' Office representing the government in applying for the dissolution of political parties in the Constitutional Court because the Prosecutors' Office had not normalized the regulations for implementing legal assistance by the Prosecutors' Office in the case of dissolving political parties in the Constitutional Court.

Based on the preliminary explanation, the object of this writing is whether the nature of the Attorney's authority represents the government in applying for the dissolution of political parties in the Constitutional Court, how is the authority of the Prosecutor's authority representing the government in applying for the dissolution of political parties in the Constitutional Court, and the extent to which political parties are held to account for criminal liability and constitutional responsibility in the Constitutional Court by the Prosecutors' Office.

## 2. Discussion

### 2.1. The Nature of the Authority of the Prosecutors' Office Representing the Government in Filing Applications for Dissolution of Political Parties in the Constitutional Court

The Attorney General's Office is the only law enforcement agency born from the womb of the Indonesian nation. In contrast to the Police which etymologically comes from the word 'police' in Dutch '*politie*' which takes the Latin '*politia*' which comes from the Greek '*politeia*' which means city residents or city government, as well as judges who are etymologically derived from the word "*hakima*" in Arabic which means the person who decides the punishment for the prosecuted party. The Prosecutors' Office existed before Indonesia's independence, during the Majapahit Kingdom, known as the '*Adhyaksa*' who led the '*Dhyaksa*' who each served to carry out the king's orders, confronting those who committed crimes before the king to be tried, and provide legal, political, economic and war tactics considerations to the King. The terms *adhyaksa* and *dhyaksa* derive from Sanskrit language is what later made the Prosecutors' Office. In its historical development, namely the Prosecutors' Office during the Majapahit Kingdom and the Mataram Kingdom with *Adhyaksa* and *Dhyaksa* officials, during the Dutch East Indies government with the *Openbaar* Minister and Officer *Van Justitie*, the Japanese colonial era with the position of *Saikoo Kensatsu Kyoku*, as well as the historical development of laws and regulations governing the Prosecutors' Office until the enactment of Law UU 16/2004<sup>1</sup>, authority of the Prosecutors' Office in several countries namely Malaysia, Singapore, Laos, the Democratic People's Republic of Korea, the United States, Japan, Sweden, the Netherlands, France, Germany, Brazil, in general there are 5 (five) principles of authority held by the Prosecutors' Office in the perspective of jurisdiction, namely: 1) Representing the government to investigate, prosecute and implement judges' decisions in criminal justice; 2) Representing the government in the settlement of cases in civil justice and state administration; 3) Government legal advisors; 4) Supervising the implementation of law by the government, community organizations, and the community; and 5) Carrying out national development. In Indonesia itself, in implementing the five principles of authority, the Attorney General has at least 8 (eight) prototype prosecutors as part of the Attorney's law, namely intelligence prosecutors, investigating prosecutors, fingerprinting prosecutors, research prosecutors, public prosecutors, state attorney prosecutors, executors prosecutors, asset recovery prosecutors, all of which are led by the Attorney General in accordance with the attribution authority given by the legislation.<sup>2</sup>

The Prosecutor's prototype in accordance with each of the above authorities is not a separation of authority as a separation of partitioned or compartmentalized power that creates sectoral egos. However, it is a division of power as a division of power. The functions mentioned above must be felt as a breath in law enforcement that is only owned by the Prosecutors' Office that is not owned by other institutions. The Prosecutors' Office as an institution representing the state and government in the field of law enforcement and justice is a law enforcement agency complete with various prototypes. The Prosecutor's prototype as outlined is the executor of law and judicial enforcement functions. None of the institutions in Indonesia have the authority to investigate, fingerprint, prosecute, execute criminal decisions, act as state lawyers, recover state assets, conduct intelligence operations, and set aside cases in the public interest and file an appeal in the interest of law to the Supreme Court in criminal, civil and administrative matters. The authorities as the Attorney's legal instrument are legal specialties that are only owned by the Prosecutors' Office. The specialization of the law is the main requirement for a representative institution of the people to submit the case of the dissolution of political parties in the Constitutional Court.

Dissolution of political parties in the Constitutional Court must be preceded by a criminal court ruling through a mechanism of investigation of political party crime, then the legal facts in the criminal ruling are used as the basis for submitting an application for the dissolution of the unconstitutional political party in the Constitutional Court. Without a criminal court ruling, it is very difficult to find a basis for submitting a petition to dissolve a political party.

Through the Attorney General, the Prosecutors' Office can be assigned by the President to represent the government to petition for the dissolution of political parties as legal entities that have committed acts in a structured, systematic and massive manner and as a result of their actions contrary to the 1945 Constitution and *Pancasila* in the Constitutional

<sup>1</sup> See Article II of the Transitional Rules for the 1945 Constitution jo. PP 2/1945, Law 7/1947, Law 19/1948, Law 15/1961, and Law 5/1991.

<sup>2</sup> Marwan Effendy, 2005, RI Attorney: Position and Function of the Legal Perspective, PT Gramedia Pustaka Utama, Jakarta, pp. 55-98. See also, EQ. RM. Surachman & Jan. S. Maringka, 2015, Eksistensi Kejaksaan Dalam Konstitusi Di Berbagai Negara, Sinar Grafika, Jakarta, p. 113-406.

Court. Through the Intelligence Prosecutors and Investigating Prosecutors conducting investigations, Fingerprinting Prosecutors conducting fingerprinting, Research Prosecutors conducting case file research, Public Prosecutors conducting prosecutions including appeals and appeal to the Supreme Court, then the Prosecutors' Office can carry out prosecutions against political parties that commit criminal acts. Furthermore, through the Attorney General and State Attorney who with a special power of attorney or a special power of attorney with substitution rights from the President, the Prosecutors' Office can represent the government to submit the request for the dissolution of political parties based on legal facts in the criminal court's decision to the Constitutional Court, and through the Executing Prosecutor and Asset Recovery Attorney, the Prosecutors' Office can implement the Constitutional Court's decision and trace the assets of political parties that will be seized for the state.

Thus, the Prosecutors' Office is a competent government agency to represent the government in submitting applications for the dissolution of political parties in the Constitutional Court. The authority of the Prosecutors' Office representing the government in submitting applications for the dissolution of political parties in the Constitutional Court is an integrative authority that combines the functions of investigation, fingerprinting, prosecution, execution of court decisions, asset recovery which is the domain of the criminal justice system with the function of the state lawyer as the representative of the government in proceeding with the Constitutional Court which is the domain of the state administrative justice system. Such integrative authority belongs exclusively to the Prosecutors' Office.

Furthermore, referring to the briefing of the Deputy Attorney General for Civil and State Administration at the Attorney Working Meeting on June 5, 2000 concerning the Objectives of the Deputy Junior Attorney General and Civil Administration or the State Attorney as the basis and guidelines in carrying out the duties and functions of the Junior Attorney General Civil and Administrative Agency (JAM DATUN) work unit<sup>3</sup>, the nature of the Attorney's authority with the attorney's prototype to represent the government as the sole legal standing of the applicant in submitting an application for the dissolution of political parties in the Constitutional Court of the Republic of Indonesia is as follows::

- Ensuring the enforcement of the law. Maurice Hauriou<sup>4</sup> states law is as strengthening process. Political parties that commit criminal acts through their management for the benefit of political parties as political party crime are unconstitutional political parties. So that law enforcement against political parties and unconstitutional political parties aims to realize the legal goals of justice as a *rechitidea*, legal certainty to create order and benefit in protecting the people's legal interests are met. Law enforcement by the Prosecutors' Office as a law enforcement agency by demanding political parties and proposing political party requests is a process of strengthening so that the legal objectives are maintained.
- Enforcing government authority. Jean Bodin<sup>5</sup> states that the law was the command of a sovereign ruler (law as command of a sovereign ruler). The omission of political party crime and unconstitutional political party threatens the authority of sovereign governments. Threatens the balance of the community. Thus, it takes the enforcement of government authority by the Prosecutors' Office as a government institution through the enforcement of criminal law and submitting applications for dissolution of political parties in the Constitutional Court.
- Protecting the public interest. Thomas Hobbes<sup>6</sup> believes that law is as the order of security. Political party crime and unconstitutional political parties threaten the stability of security and the country's economy as part of the public interest. Because of the government's interest in protecting the public interest from political parties and unconstitutional political parties, the Prosecutors' Office is a government institution and law enforcement agencies are obliged to protect the public interest and restore security stability caused by political party crime and unconstitutional political parties through criminal law enforcement and filing requests for dissolution of political parties in the Constitutional Court.
- Saving democracy. Roscoe Pound<sup>7</sup> believes that law is a balance of interests. Dissolution of political parties that carry out political party crime and unconstitutional political parties, solely in order to create social balance. Dissolution of political parties is an embodiment of maintaining a balance of social interests. Dissolution of political parties is not a political action that tends to *eigenrichting*, but rather an effort to save democracy because political parties and political parties unconstitutional political parties cause political parties that should aim to prosper democracy instead degrade democracy.

The Prosecutors' Office as a government agency and law enforcement agency, for and on behalf of the state and government, has an obligation to uphold a democratic rule of law. Political party crime and unconstitutional political parties are efforts to weaken the democratic rule of law. On the contrary, the enforcement of criminal law and the submission of applications for the dissolution of political parties in the Constitutional Court is a process of strengthening the Indonesian state as a democratic rule of law.

<sup>3</sup> Results of the Directive of the Deputy Attorney General for Civil and State Administration At the Prosecutor's Working Meeting on 5 June 2000 concerning the Objectives of the Deputy Attorney General for Civil and State Administration or State Attorney as the basis and guideline in carrying out the duties and functions of the Junior Attorney General Civil and Administrative Administration (JAM DATUN) work unit is to uphold the law, uphold the authority of the government, safeguard public interests, save democracy, and save state finances.

<sup>4</sup> Bernard L. Tanya, Yoan N. Simanjuntak & Markus Y. Hage, 2007, Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi, CV. KITA, Surabaya, hlm. 169.

<sup>5</sup> Ibid. p. 74.

<sup>6</sup> Ibid., p. 77.

<sup>7</sup> Ibid., p. 180.

## 2.2. Legal Arrangements Authority of the Prosecutors' Office Representing the Government in Filing Applications for Dissolution of Political Parties in the Constitutional Court

The Attorney General's Office is a government agency that exercises state power in the field of prosecution and other authorities based on laws which carry out state power independently. Freedom in the sense of carrying out its functions, duties and authority is independent of the influence of governmental power and the influence of other powers. Based on Article 30 paragraph (2) of Law 16/2004, in the field of civil and administrative matters, the Prosecutors' Office with a special power of attorney may act both inside and outside the court of law for and on behalf of the state or government. The implementation of the Prosecutor's function in the field of civil and administrative matters is carried out by the State Attorney<sup>8</sup> at the Deputy Attorney General for Civil and State Administration as one of the Prosecutors' organizations.<sup>9</sup>

In Law 16/2004 as a statutory regulation governing the Prosecutors' Office, none of the material articles *expressive verbis* the authority of the Prosecutors' Office to represent the state or government in applying for the dissolution of political parties in the Constitutional Court. However, if we examine extensively and systematically the provisions of Article 30 paragraph (2) of Law 16/2004, the Prosecutors' Office can represent the state or government in submitting an application for the dissolution of political parties in the Constitutional Court. The explanation is as follows: To become a legal entity in a political party, a political party must have and implement the provisions or conditions stipulated in Article 3 paragraph (2) of Law 2/2008 jo. Act 2/2011. In the provisions of Law 2/2008, before the Ministry of Law and Human Rights legalizes a political party as a legal entity, verification is carried out first, whether the political party meets the requirements to be ratified as a legal entity. Verification involves the conditions for the establishment of a political party. If it meets the requirements, the political party is endorsed as a legal entity. Political Party Legal Entity is a legal subject in the form of a political party organization that has been approved by the Minister of Law and Human Rights of the Republic of Indonesia. As one of the organizations formed based on freedom of association, the consistency of the recognition of political parties can only be recognized if the organization has formed a legal entity. Decree of the Minister of Law and Human Rights of the Republic of Indonesia which gives power or authority to political parties to become legal subjects as supporters of rights and obligations. From its standpoint, political parties are established by individual individuals who can be seen as private legal entities, however political parties have an interest goal that is not private but public, especially those that are related to the interests of the people. Therefore, political parties are referred to as public legal entities, although on the other hand political parties can play their role as private legal entities, if these activities intersect with civil traffic. Similar to private legal entities that obtain legal entity status from the state, the ratification of political parties as legal entities of political parties by the Minister of Law and Human Rights is a civil legal act.

As a position that legalizes political parties as legal entities of political parties, then based on Article 1 of Law 39/2008 jo. Article 1 of Presidential Decree 44/2015, Minister of Law and Human Rights is the president's assistant who leads the state ministry to carry out government affairs in the field of law and human rights. The Minister of Law and Human Rights is a state administrative officer while the Ministry of Human Rights is a state administrative body as referred to in Article 1 number 2 of Law 5/1986. Thus, as a state administration body or official carrying out government affairs in the field of law and human rights, the decision determined by the Ministry or the Minister of Law and Human Rights is the decision of the state administration body or official as referred to in Article 1 number 3 of Law 5/1986.

The case of the dissolution of a political party is a case where the government submits an application for the dissolution of a political party to the Constitutional Court by dissolving and canceling the legal entity status of the political party being requested for dissolution as mentioned in several provisions in Article 73 of Law 23/2004 and Article 10 of PMK 12/2008. Dissolving and canceling the legal entity status of a political party means that the government requests the Constitutional Court so that the government can remove the dissolved political party from the government register and announce it in the State Gazette of the Republic of Indonesia. Deleting a political party from the government register means canceling the government's decision through the Minister of Law and Human Rights who ratifies a political party as the legal entity of a political party. Therefore, the proposed cancellation in the case of a request to dissolve a political party is the cancellation of a Decree of the Minister of Law and Human Rights that authorizes a political party as a legal entity for a political party. As described above, according to jurisprudence, this case is part of the case governed by the state administrative law regime. Decree of the Minister of Law and Human Rights which ratifies a political party as a legal entity of a political party includes a state administration decision that is excluded in Article 2 paragraph (1) of Law 5/1986 jo. Law 9/2004. The State Administrative Law in force in Indonesia recognizes that the Decree of the Minister of Law and Human Rights that ratifies a political party as a legal entity of a political party is a State Administration Decree which is a civil law act similar to a private legal entity whose cancellation mechanism is not in the General Court and the State Administrative Court but in the State Administrative Court, namely the Constitutional Court.

Based on the above explanation, the State Administrative Decree is an embryo of the Decree of the Minister of Law and Human Rights that ratifies a political party as a legal entity of a political party which then becomes the object of cancellation in the request to dissolve a political party in the Constitutional Court so that based on Article 30 paragraph (2) of the Law 16/2004 The Attorney General's Office with a special power of attorney can represent the government acting in the Constitutional Court. Legal reasoning is also strengthened by normative affirmation by the Constitutional Court itself

<sup>8</sup> The term State Attorney is first normalized in Article 31 paragraph (1), Article 33, Article 34 of Law 31/1999, which is designated as an instrument of civil law enforcement with a focus on saving state assets

<sup>9</sup> Vide Article 5 letter g of the Republic of Indonesia Presidential Regulation Number 38 Year 2010 Concerning the Organization and Work Procedures of the Republic of Indonesia Attorney Office jo. Article 6 letter g Regulation of the Attorney General of the Republic of Indonesia Number: PER-006/A/JA/07/2017 concerning the Organization and Work Procedures of the Attorney General's Office of the Republic of Indonesia.

through Article 3 paragraph (1) of PMK 12/2008 which states that the petitioner in the case of dissolution of political parties in the Constitutional Court is a government that can be represented by the Attorney General.

Empirically, the Prosecutors' Office representing state and government institutions has taken place at hearings in the Constitutional Court, both in terms of judicial review, disputes over the results of general elections for members of the People's Legislative Assembly, members of the Regional Representative Council, members of the Regional People's Representative Council, and disputes over the authority of the institution. The Prosecutors' Office that has duties and functions in the field of state administration is the Deputy Attorney General for Civil and State Administration through the State Attorney. The State Attorney based on a special power of attorney conducts law enforcement and legal assistance or based on a warrant carrying out legal considerations, other legal actions and legal services in the civil and administrative fields. In connection with the case of the dissolution of a political party, the submission of a request to dissolve a political party is part of legal aid activities by the State Attorney. The legal aid referred to is the task of the State Attorney in the case of dissolving political parties representing the government based on a special power of attorney as the petitioner for dissolving political parties. The Prosecutor's profession as a State Attorney is not antinomic to the lawyer profession in Law 18/2003 because there are separate *expressive verbis* exceptions specified in Article 30 paragraph (2) of Law 16/2004. Moreover, the existence of a State Attorney as a law enforcer is recognized and has long been used in the history of law enforcement in the Dutch East Indies era until now through Article 32 paragraph (1) of Law 31/1999 and Article 30 paragraph (2) of Law 16/2004. The normative historical recognition is the legitimacy of the existence of the Prosecutors' Office through the State Attorney with special powers to act on behalf of the state or government in the field of civil and state administration including as a government representative to act as an applicant in submitting an application for the dissolution of political parties in the Constitutional Court.

### 2.3. Criminal Accountability and Constitutional Accountability of Political Parties as Legal Entities in the Constitutional Court by the Prosecutors' Office

The history of Indonesian state administration presents the complexity of the practice of dissolving political parties several times. During the old and new order eras several political parties were dissolved, such as the Masyumi Party, the Indonesian Social Party (PSI), the Indonesian Islamic Syarikat Party (PSII), the Indonesian People's Party (PRI), the People's National Party (PRN) and in the new order of the dissolution of the Indonesian Communist Party (PKI), each of which was dissolved through a Presidential Decree.<sup>10</sup> Furthermore, in the reform era there were 2 (two) lawsuits asking for the dissolution of the Work Group (hereinafter referred to as the Golkar Party), namely Case No. 01.G/WPP/2000 and Case No. 02.G/WPP/2001 at the Supreme Court even though the suit was ultimately rejected because there was not enough evidence.<sup>11</sup> Whereas in several countries in the world, the practice of dissolving political parties also occurred, such as the Dissolution of the *Socialist Reich Party* in 1952, *Communist Party of Germany* in 1956 in Germany, *Halkin Emek Partisi* in 1993 and Refah Party in 1998 in Turkey<sup>12</sup>; and the *Thai Rak Thai Party*, *Pattana Chart Thai Party*, *2006 Phaen Din Thai Party* in Thailand.<sup>13</sup>

To obtain the status of a legal entity, political parties must meet the conditions stipulated in Article 2 jo. Article 3 jo. Article 9 jo. Article 10 jo. Article 11 of Law 2/2008 jo. Law 2/2011 which includes 4 (four) basic elements that must be possessed by a legal entity in order to be able to be legally responsible, namely owning assets separate from other legal subjects, having goals that do not conflict with statutory regulations, having their own interests in legal traffic, as well as having internal party management and regulations. After fulfilling these requirements, a political party will obtain legal entity status if it has been approved by the Ministry of Law and Human Rights to become a political party legal entity. Minister of Law and Human Rights Regulations 34/2017 as part of the legislation provides the definition of a political party legal entity as a legal subject in the form of a political party organization that has been approved by the Minister of Law and Human Rights of the Republic of Indonesia.<sup>14</sup> Thus, political parties that have been registered at the Ministry of Law and Human Rights are partial legal orders or legal entities of political parties or legal entities that can be held accountable for law if they make mistakes through their management or members.

Furthermore, comparing corporations with political parties is like comparing twins who have the same DNA or genetic code. Corporations are private legal entities which not infrequently carry out public activities, while political parties are public legal entities that also carry out activities in the field of civil law. The same genetic instruction can also be seen from a variety of normative definitions of corporations in various laws and regulations in Indonesia, which principally provide corporate definitions are a group of people who are both legal and non-legal entities that have assets that are separate from their members. The equality of political parties and corporations can also be seen from the perspective of the formation of political parties and corporations including a group of people, possessing assets, having administrative requirements in the form of articles of association and by-laws, as well as recognition through government endorsement,

<sup>10</sup> Abdul Mukthie Fajar, 2006, *Hukum Konstitusi dan Mahkamah Konstitusi*, Sekretariat General and Registrar of the Indonesian Constitutional Court, Jakarta, p. 202.

<sup>11</sup> O.C. Kaligis & Associates, 2001, *Partai Golkar Digugat*, Otto Cornelis Kaligis, Jakarta, pp. 3-184.

<sup>12</sup> Muchamad Ali Safa'at, 2009, *Pembubaran Partai Politik*, Disertasi, FH-UI, Jakarta, pp. 106-117.

<sup>13</sup> Based on the results of the author's interview with Mr. Panumas Achalaboon<sup>13</sup> as the Prosecutor at the Thai Prosecutors' Office stated that the case of dissolution of Thai Rak Thai, Democrats, Phaen Din Thai, Pattana Chart Thai, and Prachatippatai Kao Na on May 30, 2007 was a case of the dissolution of a political party due to corrupt acts committed by members of the Pattana Chart Thai political party by paying two small parties, namely the Pattana Chart Thai party and Pandin Thai to participate in the general election boycotted by the opposition, especially by the Democrat Party in order to fulfill the drinking vote for the election with the aim of supporting Parttana Chart Thai to become the party that wins the election. Corruption committed by members of political parties is an act contrary to the Thai Constitution. It was further stated that the Thai Constitution limitatively stated that the Prosecutors' Office had the authority to submit applications for the dissolution of political parties in the Thai Constitution.

<sup>14</sup> Vide Article 1 number 2 Permenkumham 34/2017.

whereas due to the dissolution of political parties and corporations also have in common namely political parties and corporations disband when dissolving by their own decision, merging/merging with political parties or other corporations, and forcibly dissolved through a court decision.

It is the partial legal order or recognition from the government that ultimately makes political parties and corporations as legal entities (*rechtspersoon*) so that they become legal subjects that have rights and obligations in legal traffic. The similarity of political parties and corporations is inseparable because they both come from the same stem cell that is a group of legal persons who have management and assets separated from its members. The similarities between political parties and legal entities and corporations make the legal entities of political parties be held liable as corporations. In essence, the doctrines of corporate responsibility can be imposed on political parties which through their management commit criminal acts.

Indonesian regulations recognize the form of dissolution of political parties in 3 (three) creeds, namely dissolving themselves at their own discretion, joining with other political parties, and dissolving by the Constitutional Court. The first and second forms of dissolution seem very difficult to expect. Because political parties are formed not to be dissolved or joined by other political parties. Although this is possible as a simplification of political parties that occurred in the new order with Law 3/1975 jo. Act 3/1985. Furthermore, the provisions of Article 48 paragraph (3), paragraph (7) jo. Article 40 paragraph (2) of Law 2/2008 jo. Law 2/2011 and Article 68 paragraph (2) jo. Article 2 of PMK 12/2008 states that political parties can be submitted for dissolution through the decision of the Constitutional Court if:

- The ideology, principles, objectives, and programs of political parties are contrary to the 1945 Constitution of the Republic of Indonesia;
- The political party carries out activities which are contrary to the 1945 Constitution of the Republic of Indonesia and the laws and regulations;
- The political party carries out activities which endanger the integrity and safety of the Unitary State of the Republic of Indonesia;
- The political party adheres to and develops and spreads the teachings or understandings of communism/Marxism-Leninism;

Violation of the reasons in points (1) and (4) is difficult to apply because this reason is an administrative reason that all political parties that expressly *verbis* may not violate by including their ideology, principles, objectives, political party programs that are contrary to the 1945 Constitution of the Republic of Indonesia, and these political parties embrace and develop and spread the teachings or understandings of communism/Marxism-Leninism in their statutes and by-laws. Furthermore, the reasons in points (2) and (3) constitute a prohibition that invites a very broad interpretation but on the one hand provides opportunities for certain criminal acts as unconstitutional activities and consequences and endangers the integrity and safety of the Unitary State of the Republic of Indonesia, which is elaborated as the following:

### 3. Dissolution of Political Parties

#### 3.1. Article XX

A political party can be dissolved by the Constitutional Court if:

- ideology, principles, goals, programs of political parties contrary to the 1945 Constitution of the Republic of Indonesia; and/or
- political party activities are contrary to the 1945 Constitution of the Republic of Indonesia or the consequences thereof are contrary to the 1945 Constitution of the Republic of Indonesia; and/or
- embrace and develop and spread the teachings or understandings of communism/Marxism-Leninism.

The acts referred to in paragraph (1) letter b include:

- Crimes of treason as referred to in Article 104, Article 106, Article 107 paragraph (1), Article 108 paragraph (1), Article 110 paragraph (1) and paragraph (2), Article 111, Article 111 bis paragraph (1), Article 131, Article 139b, Article 139c, Article 140 of the Criminal Code;
- The criminal offense as referred to in Article 107 letters a, b, c, letter d, and letter e of Law Number 27 of 1999 concerning Amendment to the Indonesian Criminal Code relating to Crimes against State Security;
- Criminal acts of terrorism;
- Corruption related to state finance;
- Money laundering that predicate the crime of corruption and/or terrorism;
- Crimes against gross human rights violations;

The acts referred to in paragraph (1) letter b and paragraph (2) must be carried out in a structured, systematic and massive manner.

Expressive verb is statement regarding the form of the act as well as the consequences of the act in question contrary to the 1945 Constitution is intended to provide legal certainty.

Crimes of treason, ideological crimes, criminal acts of terrorism, criminal acts of corruption related to state finances, money laundering which predicate its crime of corruption and/or terrorism, criminal offenses of gross human rights violations (hereinafter referred to as political party crime and unconstitutional political party), each of which is an extraordinary crime which has widespread consequences for the community and the state so that it contradicts the 1945 Constitution. Political party crime and unconstitutional political party are criminal acts which intentionally including intentionally as an intention or *opzet als oogmerk*, namely that the acts are intentional to be done in order to achieve the goal. That is, the perpetrator commits the act, the action and its effects actually materialize. Not only that, intentional as

the intention in the act of bondage is a form of *dolus premeditatus*, namely intentionally carried out with a plan in advance. Plans to commit a prohibited act are not a special form of *dolus*, but rather give a nuance to a criminal act with careful consideration. Political party crime and unconstitutional political parties are associated with intentional forms as intent in the form of *dolus premeditates*, so the implementation of the crime must be structured, systematic and massive (hereinafter referred to as TSM). As stated by Prof. Dr. Edward Omar Sharief Hiariej in the Hearing Trial of the Election of President and Vice President of 2019 in the Constitutional Court which stated in stating:

"in the context of the doctrine, the term TSM was first known in crime studies to mention the nature and characteristics of gross violations of human rights which refer to 4 (four) prototypes of international crime. Each one is aggression, genocide, crimes against humanity, and war crimes. Structured implies that the crime was committed in an organized manner based on the chain of command. Systematic refers to the *modus operandi* that is well organized and neat with knowledge of the act. Whereas massive refers to the scale of the spread of the crime."

To prove the act of fulfilling the TSM requirements, it must be proven in 2 (two) things that are often mentioned in the double of set, namely the existence of a meeting of mind between the perpetrators of violations as a subjective condition and the existence of real collaboration to realize meeting of mind among violators as an objective condition collectively or together. Regarding systematic, violations committed indicate violations that are planned in a well-planned, organized, and even very neat. Planning as a form of *dolus premeditatus* in relation to structured obliging to prove the substance of planning, who does, when and where, must show for certain the occurrence of meeting of mind and real cooperation to show the existence of the meeting of mind. The issue of massive socializing impacts of violations has a very broad influence on society and government. This means that there must be a causal relationship between the violation and the further consequences of the causality relationship that must be proven. To prove the causal relationship between a political party crime and an unconstitutional political party with TSM conditions and the relationship as an act and its consequences are contrary to the 1945 Constitution, individualization theory must be used as a theory that sees a cause in *concreto* or *post factum*. Because structured and systematic violations must have massive effects, not partially, but very broad.

Political party crime and unconstitutional political party are criminal acts committed by party officials who have a functional position in the party organizational structure that acts for and on behalf of the party or acts in the party's interests, based on the party's statutes and bylaws, both individually and together. Political parties can be held criminally liable for an act committed for and/or on behalf of the party if the act falls within the scope of party authority as specified in the articles of association, bylaws, or other provisions that apply to the party concerned or if the act is done outside the authority of the party who is appealing or done in the party's interests. To identify the forms of criminal responsibility of political parties as corporations with legal entities that commit criminal acts must prove that the actions of political parties through their management are carried out in a structured, systematic and massive manner, as well as proving the causal relationships of actions and the consequences of actions that fulfill the TSM element are contrary to the 1945 Constitution. In the perspective of the doctrine of strict liability, political parties can already be convicted if they have been proven to have committed acts that are prohibited by law without having to prove the element of wrongdoing of the criminal offender. The imposition of strict liability doctrine that does not require *mens rea* is a justification for making political parties liable for carrying out political party crimes and unconstitutional political parties that require the *mens rea* for accountability. Political parties in carrying out criminal acts are always represented by political party management. In this case it acts as an organizational controller, considering that the party cannot possibly be blamed criminally. However, with the birth of the doctrine of strict liability, criminal liability can be imposed on the perpetrators of the relevant criminal acts by not needing to prove the existence of mistakes (intentional or negligence) on the perpetrators. Then to withdraw criminal liability to political apartments can be done with accountability using the doctrine of vicarious liability that allows the political party to be held accountable for acts committed by the management including the controller of the organization that has the power to carry out party activities. Through this vicarious liability doctrine, political parties cannot avoid criminal liability on the grounds that political parties have delegated political party activities that are legal to the central executive or regional administrators of political parties. In the criminal liability of political parties, the bond between political party management and the political party itself is very tight, so that it is rather difficult to identify which actions were carried out by political party management in order to achieve the objectives of the political party by which actions carried out by political party management in the interests of the political party management itself. This problem can be answered by applying identification theory that emphasizes the directing mind (brain) of the perpetrators of the crime. In perspective, the doctrine of identification, inner actions or attitudes of the central and regional central officials having a directing mind can be considered as a brush for political parties. This means that the inner attitude is identified as a political party and thus political parties can be directly accounted for. Based on the three doctrines of criminal responsibility, it can be seen 3 (three) forms of relations between political parties and their management in relation to the accountability of political parties as follows:

- Political parties can only commit criminal acts through their management and to be accounted for, the crime must be carried out by one of the managements who is the brain of the company. So, it appears that identification theory has a crucial role in proving criminal liability of political parties;
- If a criminal offense is committed by an administrator whose actions can be considered to represent a political party as well as his own actions, the political party and the management can be seen in their positions as principals and accessories or as joint principals. Means that both political parties and their management can be accounted for;
- If a general chairperson of a political party does not act to prevent a criminal offense from being committed by another board or himself so that it is considered a crime by a political party, then he can be accounted for as an

accessory. But it is not an accessory in a crime committed by a political party, but an accessory because it does not prevent the crime. Thus, the criminal liability is an offense omission that is allowing the crime to occur.

Out of the 3 (three) forms of relationship between political parties and their management, the difference between the criminal liability system directed at political parties and the accountability directed at the management of political parties can be seen as follows:

- The management of political parties as the perpetrators of the crime so therefore it is the management who must bear criminal responsibility;
- Political parties as perpetrators of crime, but the management must bear criminal responsibility;
- Political parties as perpetrators of crime and political parties themselves must hold criminal responsibility;
- The management and political parties are both the perpetrators of the crime and both must bear criminal responsibility;

For points a and b, only the management of the political parties involved must be responsible if:

- The acts are carried out by the management of political parties or members of political parties who are the controllers of political party organizations;
- The actions of the management of political parties do not benefit political parties but only benefit individuals;
- The actions of the management of political parties are carried out contrary to the aims and objectives of political parties which are regulated in the provisions of the Articles of Association and by-laws of a political party;
- The actions of the management of a political party deviate from the functions and duties of a political party.

To distinguish the accountability of political parties with the accountability of political party management, in looking at the mistakes of political parties one must pay attention to, among others:

- Political parties can benefit or benefit from the crime or the crime is committed for the benefit of political parties. Extensively, profits are realized by receiving funds from proceeds of crime and power struggles with the aim that political parties themselves and others occupy the government.
- Political parties allow criminal acts to occur. If a political party has the authority to stop a crime but the political party does not do it, then in the perspective of *dolus premeditatus*, the attitude of the political party is an intension of error desired by the political party because the political party receives the benefits and benefits of the crime.
- Political parties do not take the necessary steps to prevent, prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal acts. Political parties have obligations that are determined by laws and regulations so that when political parties neglect even though political parties through their management know the impact that will occur if the crime is committed and political parties have the authority to prevent criminal offenses from occurring, naturally political parties want criminal acts to occur.

In addition, in making a political party a criminal offense, one must pay attention to, among others: a) The level of loss or impact resulting from the crime; b) Level of involvement of political party management and/or political party controlling role; c) The length of the criminal act that has been committed; d) The frequency of criminal acts by political parties; e) Forms of misconduct; f) Involvement of public officials; g) The value of law and justice that lives in society; h) Track record of political parties in carrying out their activities; i) The effect of criminal punishment on political parties; and/or j) Cooperation of political parties in handling criminal acts carried out by their management. The elements mentioned above are the logical consequences of criminal acts committed by political parties that must be realized in a structured, systematic and massive manner.

The imposition of the doctrine of identification, vicarious liability, and strict liability in a political party is solely intended to attract the involvement of political parties through its executives who commit criminal acts to be sanctioned for the actions they have caused.

In proving criminal liability towards political parties that commit political parties and unconstitutional political parties, it must prove that these acts were carried out in a structured, systematic and massive manner.

The government as the only legal standing of the applicant who can assign the Attorney General must be able to prove the structured, systematic and massive criminal acts as the most basic postulate in the evidentiary law, namely the *actori incumbit probatio*, which means who is suing, he is the one who must prove. A number of other related principles are the *actori incumbit onus probandi* which means whoever accuses the person who is obliged to prove. *Ei incumbit probatio qui dicit, non qui negat*, which means that the burden of proof is on the person who sued, not the defendant. *Probandi necessity incumbit ei qui agit*, which means that the burden of proof is delegated to the plaintiff. There is still a principle that says *affirmati non neganti incumbit probatio*, which means proof is mandatory for those who say yes, not those who deny. *Affirmati et probare*, which means the person who said yes, must prove and *reo negare actori incumbit probatio*, meaning that if the defendant does not recognize the claim, the plaintiff must prove. If the petitioner to dissolve a political party cannot prove the existence of *dolus premeditatus* as an intervention of the wrongdoing of a political party in a structured, systematic and massive manner, then the postulate *actore no probante reus absivultur* is carried out, meaning that if it cannot prove the defendant must be acquitted or the claim or application must be rejected. Proof by the Government through the Prosecutors' Office plays an important role in proving the criminal responsibility of political parties in criminal justice as well as the constitutional accountability of political parties in the Constitutional Court.

#### 4. Closing

Dissolution of political parties must be based on *ratio legis* based on definite evidence to prove the mistakes of political parties. The logical consequence of proving the error requires the government through the President who can assign the Attorney General as the sole legal standing of the applicant to prove that political parties have violated the 1945 Constitution. The nature of the authority of the Prosecutors' Office representing the government in submitting applications



for the dissolution of political parties in the Constitutional Court is the interest of the state to dissolve political parties that commit acts and consequently conflict with the 1945 Constitution. Dissolution of political parties is a mechanism of state justice which is preceded by a criminal court that begins the investigation process so that the dissolution of the political party court is a court that integrates functions in the criminal justice system with state administration in the Constitutional Court. Only the Prosecutors' Office as a government institution through the prototype of the Prosecutor is able to exercise the authority to dissolve political parties as an integrative authority that is attributively based on statutory regulations. The State Administration Decree is an embryo of a Minister of Law and Human Rights Decree which legalizes a political party as a legal entity of a political party which then becomes the object of cancellation in the request to dissolve a political party in the Constitutional Court so that based on Article 30 paragraph (2) of Law 16/2004, the Prosecutors' Office with a special power of attorney may represent the government in proceeding with the Constitutional Court. To attract criminal liability and legal liability for political parties committing crimes that are contrary to the 1945 Constitution as the basis for the dissolution of political parties can use the strict liability doctrine, vicarious liability doctrine, and the doctrine of identification where political parties can be held liable for crimes through their managers who commit extra ordinary crime in a structured, systematic and massive manner.

To strengthen the integrative authority of the Prosecutors' Office in the case of the dissolution of political parties in the Constitutional Court, it is necessary 1) harmonization of laws and regulations governing political parties, the laws of the Constitutional Court, Prosecutor's Law and its implementing regulations, 2) regulations that explicitly regulate the legal entities of political parties as corporations with legal entities, 3) the regulation of extra ordinary crime as an act and its consequences is contrary to the 1945 Constitution in the laws and regulations governing political parties, the laws of the Constitutional Court; 4) legal arrangements for the dissolution of political parties which must go through the criminal justice process first; and 5) education and training in handling cases of dissolution of political parties in the Constitutional Court for Prosecutors.

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