

*Research Article***The Supreme Court's Authority: Judicial Review of Statutes and By-Laws of Political Parties against Laws**Fahri Bachmid^{1*}, Diani Indah Rachmitasari²¹Faculty of Law, Universitas Muslim Indonesia, Indonesia²Faculty of Spatial Sciences, University of Groningen, Netherlands

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ABSTRACT

The debate about the authority of the Supreme Court to examine the Statutes and bylaws of Political Parties against the Law has become a problem in the practice of law in Indonesia. This study aims to analyze the nature of the Supreme Court's authority to examine the Statutes and bylaws of political parties against the law. This research is a normative legal research. The data collection technique used in this research is literature study. The analytical technique used in this research is hermeneutic analysis method and interpretation. The results of this study indicate that political parties as public legal entities are present in all aspects of government and have an important contribution in determining the direction of constitutional development in Indonesia. Ratification of the Articles of association and by-laws of Political Parties based on a Ministerial Decree and announced in the State Gazette of the Republic of Indonesia. In this case, the Statutes and bylaws of a political party are statutory regulations under laws and Ministerial Decrees. The Supreme Court must carry out its supervisory function, including testing the Statutes and bylaws of political parties that are in conflict with the Law on Political Parties. This study concludes that the Supreme Court exercises broad powers as judge made law, especially in dealing with complex cases, such as the Statutes and bylaws issues of political parties.

Keywords: Judicial Review; Laws and Regulations; Political Parties; Statutes and By-Laws; Supreme Court's Authority.

A. INTRODUCTION

Political parties (Parpol) are important instruments in a democracy. The importance of political parties in a democratic country is to control the policies of a democratic country (Berry, & Gersen, 2017). The role of political parties is so strategic that there is an assumption that contemporary democracy is democracy of political parties (Katz, 1980). In the Indonesian context, the process of reform and democratization has been going on for more than a decade. However, the liberalization policy of political parties is not

followed by an effective and firm regulatory framework. The absence of regulatory and control mechanisms over the Articles of Association and Bylaws (AD/ART) of political parties based on the Law of the Republic of Indonesia Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (hereinafter referred to as the Law on Political Parties) has contributed to many political party disputes and the declining quality of political parties in Indonesia. As a result, political parties move without a firm legal corridor. This condition causes

political parties to become strong but uncontrollable entities in a liberal political climate. Finally, the boundaries of ethics and law are violated by political parties without thinking about the consequences, and this has a negative impact on the political parties themselves and for the life of a democratic country (Levinson, & Sachs, 2015). This condition is very visible with the efforts of political parties competing to collect coffers of money to run the wheels of the political party organization (Pinilih, 2017). Political party administrators often use various maneuvers, including using the political party's AD/ART to pass personal political desires with elitist decisions. This condition is one of the causes of the low quality of Indonesian democracy.

The results of the Indonesia Institute research found indications of the failure of political parties in carrying out the function of political recruitment in a democratic, transparent, and meritocratic-based manner (Arlis, 2017). Filling the management in political parties is often done in a way that is conditional on the cartel. Apart from the cartel problem, pragmatism also undermines the behavior of elites, cadres, and political party constituents. In addition, the problem of oligarchism infects leadership and decision-making models in political parties (Imansyah, 2012). Furthermore, factionalism is also a problem that weakens integration in political parties.

On the other hand, Yusa Djuyandi in his publication views that the existence of political

parties has been considered very critical and this has been seen in the community, among others (Djuyandi, 2020):

1. Political parties are nothing more than political vehicles for a group of elites who are in power or want to satisfy their power;
2. Political parties only function as a tool for a few people to win the votes of the people who are easily deceived, to enforce certain public policies that tend to have an oligarchic nuance.

The above view is evidenced by the results of a survey from the Indonesian Institute of Sciences which shows that the level of public trust in democracy is still high. However, public trust in political parties is relatively low. The survey results of the Indonesian Survey Institute in January 2021 also showed that political parties were in the second lowest position as institutions trusted by the public (below 50%). Furthermore, in his book Diana Fawzia et al stated that:

"People's distrust of political parties arises because the performance of political parties in Indonesia is still far from expectations. Moreover, the political culture in this country is very parochial in many places." (Fawzia et.al, 2018)

This fact clearly cannot be separated from the internal conditions and culture of the political parties, where all kinds of internal aspects are jointly regulated and determined by all members of the political parties in the political party's AD/ART. On the other hand, the issue of the existence of political parties is not only present from the public side as an external factor for

political parties. The problem of political parties is also present from the cadre side as an internal factor for political parties (Romli, 2017). For example, the phenomenal event was carried out by four cadres of the Democratic Party who submitted an application for judicial review of the 2020 Democratic Party's AD/ART. In this case, it was based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number M.H09.AH.11.01 of 2020 concerning Ratification Amendments to the Democrat Party's Articles of Association and Bylaws.

The request of the four Democrat Party cadres led to the Supreme Court Decision of the Republic of Indonesia Number 39 P/HUM/2021 (hereinafter referred to as PMA No. 39/2021). In this case, the Decision stated that the petition for objection to the right of judicial review from the Petitioners cannot be accepted. The reasons why the Supreme Court did not accept the petitioners' petition were, among others:

1. AD/ART of a political party is not a legal norm that binds the general public but only internally binds the political party concerned;
2. Political parties are not state institutions, agencies, or institutions established by law or by the government at the behest of the law;
3. There is no delegate from the Act ordering political parties to form laws and regulations.

From the reasons mentioned above, it presents a series of discourses on the authority of the Supreme Court and the position of political

parties in the constitutional law system in Indonesia.

Basically, the law is an instrument to protect the rights of citizens (Pawestri, 2019) including members of political parties. However, in the context of this research, the AD/ART of a political party according to the Supreme Court's decision is not a statutory regulation, but in practice if the AD/ART contradicts other laws and regulations and is detrimental to the interests and political rights of the members of the political party, and only benefits some members of political parties, this raises the problem of how the law functions as an instrument to protect the rights of citizens. Based on the preliminary description above, this study aims to analyze the nature of the Supreme Court's authority to examine the AD/ART of political parties against the law.

The theoretical basis used in this research is the Stufenbau theory proposed by Hans Kelsen and refined by Hans Nawiasky through the Hierarchy of Legal Norm theory, which is quoted by Jimly Assidiqie in essence stating that the legal order is a system of tiered norms and should not conflict with one another (Asshidiqie, 2006a).

Based on the searches that have been carried out by comparing this research with several previous studies, both at the national and international levels that discussed similar research themes, it is known that a previous national research was conducted by Enrico Simanjuntak which discussed the authority of the right to judicial review at the Supreme Court of the

Republic of Indonesia (Simanjuntak, 2013). Furthermore, a research conducted by Saldi Isra which discusses the point of contact between the authority of the Supreme Court and the Constitutional Court (Isra, 2015). Furthermore, research by Budi Suhariyanto discusses the issue of execution of the decisions of the constitutional court by the supreme court (Suhariyanto, 2016). International research that discusses the role and function of the Supreme Court has been conducted by Simon Butt, Nicholas Parsons which specifically discusses the judiciary conducted by the Supreme Court (Butt, & Parsons, 2014). Finally, international research that discusses the function of the supreme court is conducted by Lochlan F. Shelfer who discusses special judges at the supreme court (Shelfer, 2014). Based on the comparison with the previous research, it is known that this research is different from previous studies so that it has a novelty value.

B. RESEARCH METHODS

This research was a normative legal research, which did not only examine the law in terms of legislation but also included a broader aspect, namely something that can be traced through library materials (Qamar, & Rezah, 2020). This research was also the author's direct experience in providing expert information based on PMA No. 39/2021. The data collection technique used in this research was literature study. The literature study was carried out by taking an inventory and analyzing legal literature

materials related to the problems studied in this research. The analytical techniques used in this research were hermeneutic analysis method and interpretation. Hermeneutic analysis was used to understand the text as a series of signs arranged in such a way by the author to convey a certain meaning. Meanwhile, interpretation analysis was used to interpret and reveal ontological, epistemological, and axiological essences related to the purpose of this research (Bachmid, 2021).

C. RESULTS AND DISCUSSION

After listening, analyzing, reading, and studying PMA No. 39/2021, in this regard, the Supreme Court stated that the petition for objection to the right of judicial review of the Petitioners was unacceptable. Therefore, it is necessary to examine the substance of the relationship between the Legislation, the AD/ART of Political Parties, and the Authority of the Supreme Court.

1. The Position of Political Parties in the Constitutional Law System and their Reality in Indonesia

Political parties are essentially the embodiment of the freedom of association, assembly, and expression of opinions as regulated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The manifestation (embodiment of the statement) of these rights forms a unit (a tangible unit) based on

statutory regulations. Article 1 number 1 of the Political Party Law explains that:

"Political parties are organizations that are national in nature and are formed by a group of Indonesian citizens voluntarily on the basis of common will and ideals to fight for and defend the political interests of members, society, nation and state, and maintain the integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia."

From the above provisions, it can be understood that political parties have a constitution and legal protection, which are described as derivative rules. This construction also considers political parties as constitutional organs, where political parties are seen as constitutional entities. This fact strengthens political party institutions which are quite significant. In today's democratic life and state administration, political parties are seen as institutions that determine the quality of democracy itself. This institutionalization then makes political parties important and *"sine quo non"* in implementing the principle of people's sovereignty. Political parties as organ entities that have a constitutional basis, as based on Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which stipulates that:

"The pair of candidates for President and Vice President is proposed by a political party or coalition of political parties participating in the general election prior to the implementation of the general election."

Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that:

"If the President and Vice President die, quit, are dismissed, or are unable to carry out their obligations during their term of office simultaneously, the executor of presidential duties is the Minister of Foreign Affairs, Minister of Home Affairs, and Minister of Defense together. At the latest thirty days after that, the People's Consultative Assembly shall hold a session to elect the President and Vice President from two pairs of candidates for President and Vice President proposed by a political party or coalition of political parties whose pairs of candidates for President and Vice President received the first and second most votes. in the previous general election, until the end of his term of office."

Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that:

"Participants in the general election to elect members of the People's Representative Council and members of the Regional People's Representative Council are political parties."

Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that:

"The Constitutional Court has the authority to adjudicate at the first and final level whose decisions are final to examine laws against the Constitution, to decide on disputes over the authority of state institutions whose powers are granted by the Constitution, decides on the dissolution of political parties and decides on disputes regarding the results of the general election."

From the provisions aforementioned, it can be understood that the recognition and regulation of the strategic position and role of political parties

are a constitutional role in the dimensions of political and constitutional life. Political parties are also present in the regional government dimension. Meanwhile, political parties are political vehicles used to nominate candidates for regional heads, both provincial and district/city governments. It is known that the pair of candidates for regional head and deputy regional head is carried by a political party or a coalition of political parties. In addition, candidates for members of the People's Representative Council (DPR) must also be proposed by political parties, as regulated in the 1945 Constitution of the Republic of Indonesia. Thus, political parties are present in all aspects of the government, including central and regional government. In addition to this constitutional role, political parties indirectly (through their cadres who are in the legislative and executive power institutions) also have an important contribution in determining the direction of constitutional development in Indonesia. Furthermore, the strategic political role of political parties is based on the authority and role of their cadres in legislative power institutions, including: 1. Carrying out legislative functions, budget functions, supervisory functions; 2. Providing impeachment proposals to the pair of President and Vice President; 3. Giving approval to the President in declaring war and making peace treaties with other countries; 4. Giving approval to the President in making international agreements; 5. Giving consideration to the President in diplomatic process through the appointment of

ambassadors and consuls as well as accepting the placement of ambassadors from other countries; 6. Giving consideration to the President in granting amnesty and abolition; 7. Giving approval to the Judicial Commission in the appointment of Supreme Court Justices; 8. Giving approval to the President in the appointment and dismissal of members of the Judicial Commission; and 9. Proposing three judges in the appointment of judges of the Constitutional Court.

In addition to the description above, there are also the authorities and roles of political party cadres in executive power institutions and other institutions, including: 1. The position of the Minister in various ministries is based on the prerogative of the President; and 2. Leadership positions in various state institutions based on statutory regulations.

Based on the description of the strategic political role aforementioned, the existence of political parties is a necessity in the era of constitutional democracy. In addition, this authority has a significant influence on the development of the state administration. In this case, the authority and role do not exist without the influence of interests (Rachim, 2016).

On the other hand, political parties as particular social organizations are also legal entities. Article 3 paragraph (1) of the Political Party Law stipulates that "*Political parties must be registered to the Ministry to become legal entities.*" Based on Article 1 point 3 of the Regulation of the Minister of Law and Human

Rights of the Republic of Indonesia Number 34 of 2017 concerning Procedures for Registration of Establishment of Legal Entities, Amendments to the Articles of Association and Bylaws, and Changes in Management of Political Parties (hereinafter referred to as Permenkumham No. 34 of 2017), explains that:

"Registration of a Political Party is the registration of the establishment and formation of a Political Party in order to obtain ratification as a Legal Entity of a Political Party."

Article 1 point 2 of the Minister of Law and Human Rights No. 34 of 2017 explains that:

"Legal Entities of Political Parties are legal subjects in the form of political party organizations that have received approval from the Minister of Law and Human Rights of the Republic of Indonesia."

These provisions can then raise a question, are political parties a public or private legal entity? To answer this question, one must refer to the Decisions of the Constitutional Court Number 60/PUU-XV/2017 and 48/PUU-XVI/2018. In this case, the Constitutional Court confirmed the legal position of the Petitioner as a "public legal entity", as regulated in Article 3 of the Regulation of the Constitutional Court of the Republic of Indonesia Number 06/PMK/2005 concerning Guidelines for Proceeding in Cases of Judicial Review. In addition, Article 1 point 3 of the Law of the Republic of Indonesia Number 14 of 2008 concerning Openness of Public Information explains that:

"Public Agency is an executive, legislative, judicial, and other body whose main functions

and duties are related to the administration of the state, some of which are or all of the funds are sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget, or non-governmental organizations as long as part or all of the funds are sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget, community contributions, and/or outsiders. country."

From the provisions aforementioned, it can be understood that political parties are included in public legal entities because Article 12 letter k of the Political Party Law stipulates that:

"Political parties have the right to obtain financial assistance from the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget in accordance with statutory regulations."

Robert C. Wigton states that:

"Political parties have developed into important political actors, without which modern representative democracy would not work. Political parties operate within the gap between public and private interests, federalism, separation of powers and representation" (Wigton, 2013).

The context of this view is in the United States, where political parties have a private side. However, political parties still maintain a quasi-public function and status that allows for dynamic and sustainable judicial power intervention. In this regard, the view was developed by Justin Safayeni in 2018, who said that:

"... But the public impact of political party decision-making, above all, gives it a public legal dimension. A recent Ontario court decision examining the race of the federal NDP leadership explained that the decisions of political parties, especially major political

parties, in terms of the candidates they nominate, the policies they adopt, and the leaders they elect, do have a very serious impact on the rights and interests of all voters"(Safayeni, 2018).

Miriam Budiardjo states that:

"The public aspect related to political parties is shown by the fact that political parties are conceptually a means for citizens to participate in managing the country" (Budiardjo, 2008).

Referring to the opinion of Jimly Asshiddiqie, political parties have an important position and role in the democratic system. Political parties play a very strategic liaison role between the government process and citizens (Asshiddiqie, 2006b).

Elmer E Schattschneider states that:

"Many scholars have argued that political parties constitute democracy... Modern democracy is unthinkable except in the case of political parties." (Schattschneider, 1960).

From the description aforementioned and related to factual conditions, it can be seen that political parties carry out public duties, at least in the context of preparing and nominating candidates for DPR members, presidential candidates, and regional head candidates. In addition, political parties must ensure healthy competition between political parties participating in the election or among candidates participating in the election. Thus, the position of political parties as public legal entities is clear. Thus, the position of a political party is clear as a public legal entity, which can act for and on behalf of the political party itself (Sitaraman, 2021).

Therefore, political parties are very important pillars in strengthening the degree of institutionalization in any democratic political system. As important as the role of political parties is, it is proper that political parties are expected to be able to guarantee fair and effective democratization. The existence of political parties in building democracy must be reflected in carrying out their roles and functions as agents of socialization and political education (Hermawan, 2020).

2. Ratification of the AD/ART of Political Parties Based on Legislation

Stufenbau theory proposed by Hans Kelsen and refined by Hans Nawiasky through the theory of the Hierarchy of Legal Norms, in a publication in the Indonesia Law Reform Journal, explains that the legal order is a tiered system of norms (Gustama, Al-Fatih, & Sarita, 2022). In the hierarchy of legal order, lower statutory regulations gain power from higher statutory regulations. Article 7 paragraph (1) of the Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations (hereinafter referred to as the PPP Law) stipulates that the types and hierarchy of Legislations consist of: a.the 1945 Constitution of the Republic of Indonesia; b. Decree of the People's Consultative Assembly; c.Laws/Government Regulations in Lieu of Laws; d. Government regulations; e. Presidential decree; f.Provincial

Regulations; and g.Regency/City Regional Regulations.

According to Bagir Manan in his paper, the definition of statutory regulations includes (Manan, 1994): 1.Every written decision issued by an authorized official contains generally accepted rules that bind all levels of society; 2.Every code of conduct that contains provisions regarding rights, obligations, functions, status, or orders; 3.Each regulation has a general and abstract nature, meaning that it does not regulate or is not directed at certain concrete objects / events / symptoms.

Article 2 paragraph (4) of the Political Party Law stipulates that the AD (Articles of Association) contains at least: a. principles and characteristics of Political Parties; b.the vision and mission of the Political Party; c. the name, symbol, and image of the Political Party; d.the objectives and functions of the Political Party; e.organization, domicile, and decision making; f.management of Political Parties; g.mechanism for recruitment of Political Party membership and political positions; h.regeneration system; i.mechanism for dismissing members of Political Parties; j.Political Party regulations and decisions; k.political education; l.Political Party finances; and m.internal dispute resolution mechanism for Political Parties.

If the AD/ART of a political party is related to the above provisions. In that case, logically we can ask, where does the legal power of the AD/ART of a political party come from? If the

AD/ART aspects of political parties are related to the views of Bagir Manan. In this case, it can be understood by general logic that the AD/ART of a political party is in accordance with the concept of statutory regulations because: 1.AD/ART of a political party is a written stipulation that has a formal form and legality; 2. The AD/ART of a political party contains rules on what members of a political party can and cannot do, which include the duties, functions, rights, and obligations of members; 3.Political parties' AD/ART contains general provisions, such as vision, mission, organizational principles, and other provisions.

From the description above, it can be understood that it is not logical if the legal force of the AD/ART of a political party is something that is given as if it was by nature. However, its enforcement binds the delegation of the Political Party Law as a higher legal norm. Even though it is stated that the source of legal power comes from the sovereignty of political party members. It is rooted in the constitutional right to associate and assemble based on the 1945 Constitution of the Republic of Indonesia. Thus, political parties' AD/ART is essentially an entity that cannot be separated from the hierarchical structure of legal norms in Indonesia. Therefore, it is appropriate and acceptable that the AD/ART of political parties is equated with the laws and regulations. In addition, the "two-faced doctrine" Adolf Merkel in the Journal of Social Science by Morus Maxine Sianipar et al stated:

"A legal norm always has two positions, namely originating from a higher regulation and becoming a legal norm. the basis for lesser regulation." (Sianipar et.al, 2022)

On the other hand, Article 4 paragraph (4) of the Political Party Law stipulates that *"a Ministerial Decree concerning the ratification of a Political Party ... is announced in the State Gazette of the Republic of Indonesia."*

From the above provisions, it can be understood that the legislation binds the AD/ART of political parties. Furthermore, the Ministerial Decree only emphasizes the AD/ART of political parties. The AD/ART of Political Parties positions the Political Party Law as the basis for higher regulations in this context. The AD/ART of a political party becomes the basis for every decision and arrangement of a political party as a lower regulation.

The description aforementioned may create a contradiction that the AD/ART of a political party only applies to internal political parties. Meanwhile, the concept of legislation applies widely, both internally and externally. So it is not appropriate to put the AD/ART of political parties together with the laws and regulations. However, the AD/ART of political parties also binds individual members of political parties after occupying strategic political positions in the government, such as the positions of members of the DPR and the President. This condition makes the valid internal argument naive and irrelevant to the legal reality that is happening. In addition, based on its position as a public legal entity, all

regulations and decisions made by political parties must be viewed as legal products that have a broad impact and dimension for the public interest. Thus, the existence of political parties requires supervision by the community and control of the parts of judicial power. Based on this thought construction, it becomes logical and very relevant to the position of political parties based on legal science.

3. Authority of the Supreme Court in Reviewing the AD/ART of Political Parties against the Law

Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that:

- (1) Judicial power is an independent power to administer justice in order to enforce law and justice.
- (2) Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court.

Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that:

"The Supreme Court has the authority to hear at the level of cassation, examine statutory regulations under the law against the law, and has other powers granted by law."

Furthermore, Article 1 point 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2011 concerning the

Right of Material Testing (hereinafter referred to as Perma No. 1 of 2011) explains that:

"The right of Material Testing is the right of the Supreme Court to assess the material content of the Laws and Regulations. Invitation under the Act to a higher level Legislation."

From the provisions aforementioned, it can be understood that the norms that can be used as objects of examination by the Supreme Court are:

1. Regulatory norms (*regeling*);
2. Norms that bind a wide audience (general); and
3. Norms that do not regulate concrete matters whose hierarchical position is under statutory regulations in the form of laws, for example:
 - a. Certain laws are tested against the laws that underlie their formation;
 - b. Certain laws are tested against other relevant laws; or
 - c. Certain laws are tested with laws and regulations other than higher level laws.

In addition, the authority of the Supreme Court is not only to examine the legislation under the law against the law. However, the Supreme Court also has the authority to examine statutory regulations above statutes against higher-level legislation, in examining this regulation, the Supreme Court must be free from the influence of any power (Pollman, 2021). Thus, the Supreme Court even has the authority to test Ministerial Regulations against Presidential Regulations or test Regional Regulations against Government Regulations, based on Article 1 point 1 of Perma No. 1 of 2011.

On the other hand, the Supreme Court as the executor of judicial power cannot reject a case that is submitted on the grounds that there is no statutory regulation that regulates it. In addition, the Supreme Court in deciding a case must be independent (Black et.al, 2016). Article 10 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power stipulates that:

"The court is prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try him."

From the provisions aforementioned, it can be understood that the Supreme Court must carry out its supervisory function. In this case, there should be no statutory regulations under the law, either formally or materially contradicting the law, including the Decree of the Minister of Law and Human Rights concerning the Ratification of the AD/ART of Political Parties that is contrary to the Law on Political Parties.

On the other hand, it departs from the description of the strategic political role of political parties as mentioned in the previous subchapter. In this case, if there is no judicial control over the political parties, the political parties will tend to be destructive, undemocratic, and oligarchic Based on Lord Acton's doctrine quoted in the publication of an article in the International Journal of Constitutional that "power tends to corrupt, and absolute power tends to corrupt in absolute terms" (Hows, 2019).

Meanwhile, it is recognized that Indonesia's constitutional design places judicial power in the hands of the Supreme Court and the Constitutional Court as state organs to administer justice (Permadi, & Wisnaeni, 2020). Independent law enforcement and justice have substantive consequence that the existence of judicial power must always be seen as having a constitutional responsibility to adjudicate every case that is brought forward. The Supreme Court is the only legal option to review every policy product issued by an institution in Indonesia, such as a political party. In this case, political parties obtain the attribution of power from the 1945 Constitution of the Republic of Indonesia and the Act. It is a logical consequence of the political party's AD/ART and its decision not to conflict with the law.

In addition, the existence of political parties as legal subjects in the Indonesian constitutional system has a strategic position and function in public political recruitment. The democratic mechanism in Indonesia also places political parties as the only means of public political participation to nominate pairs of candidates for President and Vice President as well as members of the DPR (People's Representative Council) (Arwiyah, 2012). This condition even places political parties as institutions that have the potential to *abuse power*, and have an impact on the constitutional rights of citizens who have become part of human rights (Zulfikar, & Al-Barbasy, 2019). Therefore, Article 13 letter d of

the Political Party Law stipulates that "*Political parties are obliged to uphold the rule of law, democracy, and human rights.*"

From the provisions aforementioned, it can be understood that political parties cannot escape various legal implications if they take actions and policies that are not in line with the spirit of the 1945 Constitution of the Republic of Indonesia and the Act. Therefore, in order to protect democratic principles and human rights, the AD/ART of political parties and their decisions can ideally be reviewed and assessed by means of the Political Party Law. Meanwhile, Article 46 of the Political Party Law stipulates that:

"Supervision of the implementation of this Law is carried out by functionally authorized state institutions in accordance with the law."

From these provisions, it can be understood that political parties, in carrying out the orders of the Political Party Law, must be supervised by the appropriate state institutions for that purpose. So the legal question is which state agency has the authority to supervise and even examine the contents of the AD/ART of a political party if it is deemed to be contradictory or potentially contrary to the law? Therefore, as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Supreme Court definitely has the authority to examine statutory regulations under the law against laws, including and without exception legal products formed by political parties in the

context of implementing the Act. Political parties are in accordance with the authority of delegation.

On the other hand, Indonesia is considered very vulnerable to oligarchic intrusion into its democratic and legal system due to several factors, namely: 1.As a new democracy, the capacity of civil society is still limited and unable to match the capacity of oligarchic groups; 2.Wealth is concentrated rapidly in a small group of people, all of whom can be used for various agendas, including political ends. The highly transactional political system reflects this condition; 3.Indonesia does not have a legal entity or institution that prevents oligarchs from controlling political parties or other electoral factors; 4.Capital owners can quickly establish political parties whose funding is top-down by the oligarchs concerned; 5. There are no bottom-up funded political parties.

In addition, it is clear how the intrusion of oligarchs entered through election campaign funds whose management and reporting were never publicly disclosed to election administrators.

The tendency of political parties to be oligarchic and elitist is mainly reflected in the decisions of political parties that are undemocratic and override public interests. The decision must be based on the AD/ART of the political party. A small example is the problem of inter-time turnover (PAW) of DPR members. The AD/ART of political parties carried out by cadres becomes the legitimacy of political parties to submit PAW, as regulated in the Political Party Law and the Law of

the Republic of Indonesia Number 13 of 2019 concerning the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the DPR Regional Representatives, and the Regional People's Representative Council. However, a cadre's violation of a political party's AD/ART as a basis for conducting PAW against his status as a member of the DPR can be considered as an act that overrides the public law aspect (*publicrechtelijke*) over private law (*privaatrechtelijk*). The decision is completely and absolutely in the hands of the political party management and often overrides the aspirations of the constituents. Therefore, there must be a control mechanism over the Articles of Association or AD/ART of political parties. In this case, the realization of democratic political parties and the protection of the constitutional rights of members of the DPR from all forms of discrimination that can hinder their duties as the representatives of the people.

Thus, the AD/ART of political parties is a strategic rule of the game for all its members. Logically, a good AD/ART will create a conducive culture and political climate. Thus, it can be in line with the noble ideals of political parties and strategic functions in producing qualified cadres, with integrity, and competing fairly and squarely. From a political perspective, political parties' AD/ART should function as a political institution, which Samuel Huntington interprets as quoted in the journal article JOELS as a means to

strengthen the attitudes and behaviors of patterned or systemic political parties to form a political culture that supports the basic principles of democracy (Yandra et al, 2020). In formal juridical terms, political parties' AD/ART must play a role in "*Inde Datae Legis Be Fortior Omnia Posset*", just like the constitution in constitutionalism which limits power so that its administrators cannot act arbitrarily. To realize this goal, each political party must form a democratic AD/ART (Suhaimi, 2021). Furthermore, AD/ART has a philosophical and juridical basis and does not conflict with *Pancasila*, the 1945 Constitution of the Republic of Indonesia, and the Law.

Nevertheless, it cannot be denied that it is quite complicated to expect a movement to reform party institutions starting from the internal side of the political parties themselves. Therefore, apart from the community side who evaluates political parties through election momentum, reforming political parties from an institutional perspective is still considered the most effective. This condition can be realized by establishing a system of checks and balances against the power of political parties. This condition does not aim to eliminate the freedom of political party members in determining the vision and mission of their organization but solely to guarantee and guard the continuity of democracy in Indonesia. On that basis, the control mechanism needs to be carried out by an external institution that can be trusted and can accommodate the constitutional rights of

citizens to guard democracy. The condition needed at this time is supervised by the judiciary and the community. The two dimensions of supervision can be accommodated in the form of a formal or material judicial review or judicial review by the judiciary. Regarding this issue, Moh Mahfud MD stated that:

"The idea of a judicial review aims to force regulators to comply with and harmonize with legal norms contained in higher regulations" (MD, 2015).

From this elaboration, it can be understood that a judicial review of the legality of the AD/ART of political parties is a legal control over the political process. In this case, the formation of AD/ART is carried out by internal political parties. The urgency of the judicial review is to control the consistency of political party legal products in the form of AD/ART with the Political Party Law as a higher regulation. Furthermore, Moh Mahfud MD suggests that two are at least three reasons underlying the statement of the importance of Judicial Activation (MD, 1999): 1. Law as a political product always represents a character that is determined mainly by the political constellation that gave birth to it. This condition provides the possibility that every legal product will reflect the vision and political power of the dominant power holder. Therefore, this condition is not in accordance with the legal basis or contrary to hierarchically higher regulations; 2. There is a discrepancy between the regulations and higher laws and regulations.

From the description above, it can be understood that judicial review is the most concrete solution to overcome problems related to statutory regulations. In this case, the juridical legitimacy of the formation of the AD/ART of Political Parties is delegated by the Political Party Law. This delegation can open a great opportunity to create provisions that are actually inappropriate and even contradictory to laws that are regulated further or higher. Therefore, to ensure an orderly legal system, it is necessary to conduct an effective judicial review.

In countries with advanced legal and democratic systems, such as the United States and Canada, the doctrine of judicial review has been widely practiced by the Supreme Court. In this case, intervening in the regulations and decisions of political parties and other public bodies is considered contrary to the law and principles of justice. According to Justine Safayeni:

“The court has selected decisions made by political parties using the doctrine of judicial review. Judicial review is a “public law” concept, which deals with the relationship between individuals and governments. Therefore, the decision being challenged must enter the realm of public law before the court relies on that doctrine.” (Safayeni, 2018).

This progressive statement can serve as an example for Indonesia, whose political system and democracy are developing. In this case, Indonesia's political system continues to operate in accordance with the corridors of the rule of law. Thus, the existence of a judicial review

mechanism on the AD/ART of political parties is very urgent to be realized. On the other hand, the concept of a democratic rule of law (democratische rechstaat) contains the principle of “*Politiae Legius Non Legis Politii Adoptandae*”, that politics must be subject to the law and not vice versa.

Apart from the pure trias politica theory, the right of judicial review should be a right that naturally (Natuurlijk) is inherent in the duties of judges. If there is a prohibition to review the legislation, it should be an exception. In this case, it must be regulated in the 1945 Constitution of the Republic of Indonesia or in laws and regulations, such as the affirmation that “the law is inviolable”. One of the main tasks of judges is to maintain legal order, including in the form of legal certainty. Allowing conflicting laws to be applied will create legal uncertainty, which ultimately affects the rule of law. An important aspect of the rule of law is the rule of law. Therefore, if the 1945 Constitution of the Republic of Indonesia or the Legislation does not expressly prohibit it, it must be interpreted by the judge as something that is allowed to examine laws and regulations except the 1945 Constitution of the Republic of Indonesia. The United States Supreme Court used this approach in deciding the case between Marbury and Madison.

To realize the ideas and concepts of regulation as above, ideally a breakthrough and progressive attitude is needed from the Supreme Court Justices. In this case, Sidharta identified

several key words in progressive law that was born from Satjipto Rahardjo's thoughts, including (Rahardjo, 2009): 1.Law for humans and non-humans for law. The law does not exist for itself but something more important. Whenever there is a problem with the law, it is the law that must be corrected, not forcing humans to be included in the legal scheme; 2.Progressive law is pro-people and pro-justice. Justice must be placed above the law. Law enforcers must dare to break the rigidity of legal texts that injure justice; 3.The law aims to bring people to prosperity and happiness. This objective is in line with the position of progressive law as post-liberal law; 4.Progressive law is always in the process of becoming and is not a final institution. Law continues to evolve and change itself to provide services to the community; 5.Progressive law emphasizes a good life as a prime legal basis based on the behavior of the nation; 6.Progressive law has a responsive type; always associated with goals out of the law; 7.Progressive law encourages the role of the public and does not dominate; 8.Progressive law establishes a constitutional state of conscience. In a rule of law, the main thing is the culture of making the people happy; 9.Progressive law is carried out with spiritual intelligence that is not limited to standard rules but is willing to go out in search of deeper truth values; 10.Progressive law destroys, replaces, and liberates. Progressive law rejects status quo of the submissive.

From this view, it can be understood that the concept and ideals of law in responding to

problems are to enforce laws that are more substantive and responsive, including the issue of the AD/ART of political parties. Thus, the Supreme Court can hear and declare a political party's AD/ART as an objectum litis judicial review (materialele toetsingsrecht). In addition, to enforce laws and regulations, including and at least the AD/ART of political parties, judicial power institutions and devices are needed. Judicial power is exercised by the state judiciary. The main task of the judiciary is to examine, adjudicate, decide and resolve cases submitted by people seeking justice. Judges are the core actors who functionally exercise judicial power. Furthermore, based on the science of law, the purpose of law is solely to seek justice. The concept of justice developed by John Rawls is to develop the concept of justice as fairness. Therefore, the principle of justice as fairness must be obeyed. According to Rawls, there are two basic principles of justice, namely formal justice and substantive justice. In the judicial review of political parties' AD/ART, the current intention is to ask judges to act in a position and stream of judicial activism solely to uphold substantive justice (Rawls, 2001).

Judges can use their broad powers as judge made law to provide justice for the public and justice seekers when they face complex problems, classified as "severe cases". Suppose the legislation has no answer, and there is no previous court decision on the same case to decide. In that case, the judge will seek answers

based on doctrine and or the opinion of legal experts. If the judge does not find the opinion of a legal expert to be used as a guide in deciding the case, then the judge's actions in interpreting and constructing the law to find the law will be correct. Even if deemed necessary, the judges can contra legem against the articles of legislation which he deems to be shackled. Judges can answer all new legal problems that arise through judicial activism. In this case, to realize justice as a law that lives in society and develops dynamically.

Thus, everything has been described descriptively, constitutionally, juridically, and theoretically above, so that the AD/ART of a political party is a form of regulation formed by members of a political party based on the delegation of laws. Furthermore, the formation and amendments to the AD/ART of political parties need to be determined by the Minister of Law and Human Rights. Therefore, both formally and materially, the AD/ART of a political party must not conflict with the Law on Political Parties. Article 30 of the Political Party Law stipulates that:

"Political Parties have the authority to form and determine regulations and/or decisions of Political Parties based on the AD and ART and do not conflict with the laws and regulations."

From the full description aforementioned, as well as constitutionally based on Article 24A of the 1945 Constitution of the Republic of Indonesia, Article 4 paragraph (4) of the Political Party Law, and various laws and regulations, the Supreme Court is the only institution authorized to

examine the regulations of political parties, especially the AD/ART of political parties.

D. CONCLUSIONS

There are several conclusions based on the previous results and discussion. First, political parties as public legal entities are present in all aspects of government and have an important contribution in determining the direction of constitutional development in Indonesia. Second, the ratification of the political parties' AD/ART is based on a Ministerial Decree and announced in the State Gazette of the Republic of Indonesia. In this case, the AD/ART of a political party is statutory regulations under laws and Ministerial Decrees. Third, the Supreme Court must carry out its supervisory function, including testing the AD/ART of political parties that are in conflict with the Political Party Law. Based on the description of these conclusions, it is recommended that the Supreme Court exercises broad powers as judge made law, especially in dealing with problems that are classified as complex cases, such as the AD/ART problems of political parties. In this case, to realize justice as a law that lives in society and develops dynamically.

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