



Legal reconstruction of political parties budget testing in Indonesia based on justice values

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Abstract

This study aims to weaknesses in the regulation of the Statutes and Bylaws (AD/ART) of political parties' Budget Testing in the current Indonesian constitutional system and how to reconstruct the law in order to fulfill the justice value. This type of research is descriptive qualitative. This study uses 4 problem approaches, namely the statute approach, the historical case approach, the comparative approach to law, and the conceptual approach. The legal materials used in this research are primary legal materials and secondary legal materials with data collection methods through library research. Data analysis in this study used qualitative analysis.

The results show that the Weaknesses referred to are in the basic regulations of political parties in the form of Articles of Association and Bylaws (AD/ART) of The Political Parties which are considered material and substance that cannot be legally touched, especially in the form of reviewing laws and regulations in the Supreme Court (MA). Therefore, the Statutes and Bylaws (AD/ART) of political parties must be reconstructed by placing the Statutes and Bylaws (AD/ART) of political parties into the types of laws and regulations as referred to in Article 8 Paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 13 of 2022 concerning Formation of Legislation and amending provisions in Law Number 2 of 2008 concerning Political Parties as amended by Law Number 2 of 2011 concerning Political Parties.

Keywords: legal reconstruction, political parties, budget testing, justice value

Introduction

The State of Indonesia has the 1945 Constitution of the Republic of Indonesia as its constitution which is also referred to as the basic law for the Indonesian state or by Hans Nawiasky in Gustama (2022) ^[6] that is also known as the most fundamental legal norm which is a guiding star in the course of state administration, including in the formation of laws and regulations. This proves that there is no country without a constitution even if the country's population is not large and its territory is not that wide, it is certain that the country must have a constitution.

In relation to this, The Statutes and Bylaws (AD/ART) for political parties, that is, an organization that coordinates candidates to compete in a particular country's elections will certainly be a guide in making party regulations and other regulations. The Statutes and Bylaws (AD/ART) of political parties are ratified by the Ministry of Law and Human Rights and this is a condition for making a political party a legal entity. Likewise, for example, other organizations such as youth organizations, Unions, whether in urban or in rural areas are ensured to have Statutes and Bylaws (AD/ART) which serve as guidelines within these organizations.

The Statutes and Bylaws (AD/ART) of political parties contain the agreement of all cadres, members, and administrators of political parties and they are useful for cadres, members, and administrators of political parties as a guide in carrying out organizational mandates. It cannot be made by a handful of ruling political party elites, who pretend to be party owners, and if this is done then it is very dangerous. All deviations and abuse of power can also be carried out by only taking cover behind the Statutes and Bylaws (AD/ART) of political parties.

Once again, the Statutes and Bylaws (AD/ART) of political parties may not be made by a handful of people within a political party and only to accommodate the interests of a group of people. The manufacturing process must be carried out in democratic ways. The Statutes and Bylaws (AD/ART) which were made undemocratically, and until now there is no legal basis that can be used to review them, are clearly not in accordance with the principle of constitutionality. This principle is intended to dismantle the dark veil of law products, including the Statutes and Bylaws (AD/ART) produced by political parties whether the creators have malicious intent to deviate from constitutional principles. Although the statutes and bylaws (AD/ART) are legal because they are made through formal procedures, materially they deviate from constitutional principles because after all, political parties are an important element in a democratic country.

As an important instrument in a country that adheres to a democratic system, political parties must also be democratic, and political parties are not justified in straddling these very democratic values. There should not be enormous power in a political party that can determine everything. It is the same as the state and power. Political parties must also be controlled and supervised by members, cadres, and so on. therefore, the state of Indonesia, as a constitutional state as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia shows that the rule of the state of Indonesia is that of a constitutional state is not the transfer of the formula previously contained in the elucidation of the 1945 Constitution (as part of the five political agreements) but also affirming that the country Indonesia aspires to is a democratic state based on the law (constitutional democratic state). A state that is a rule of law

is not only characterized by the formation of laws and regulations and all the dynamics of reviewing them, both material and formal but also characterized by the formation and drafting of the Statutes and Bylaws (AD/ART) of political parties which must be in accordance with the provisions contained in the Law, that is, The 1945 Constitution of the Republic of Indonesia and its laws and regulations, therefore the Indonesian state which is based on democracy must be a guide in the formation of the Statutes and Bylaws (AD/ART) of political parties.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Political Parties Budget Testing In Indonesia Based On Justice Values*" where the main problem discussed in this article is as follows:

1. What are the weaknesses in the regulation of the Statutes and Bylaws (AD/ART) of political parties' Budget Testing in the current Indonesian constitutional system?
2. How is the reconstruction of regulations testing the Statutes and Bylaws (AD/ART) of political parties' Budget Testing in the Indonesian constitutional system based on the value of justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [7].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [5]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses in the Regulation of the Statutes and Bylaws (AD/ART) of Political Parties' Budget Testing in the Current Indonesian Constitutional System

The Articles of Association and Bylaws (AD/ART) of political parties contain many weaknesses, both in terms of legal structure, legal substance, and legal culture. With these weaknesses in the Statutes and Bylaws (AD/ART) of political parties, it is difficult for political parties to become democratic institutions in this country and as a bridge between society and the state. So political parties need to be reformed, especially the laws and regulations governing political parties, including the need to review the Statutes and Bylaws (AD/ART) of political parties in the constitutional system of the Republic of Indonesia. In order so that there is no law and regulation, both the law if it conflicts with the Constitution of the Republic of Indonesia and the laws and regulations that are under the law against the law, including the statutes and bylaws (AD/ART) political parties that cannot be tested by the judiciary in Indonesia requires regulations, as no matter how low the degree is in the Indonesian legal system, there needs to be a testing mechanism against higher statutory regulations.

At least, there are four important factors that lead to the weak institutionalization of political parties in the reform era. First, the absence of party ideology. The ideology of a party can be identified from the principles and objectives of the party. The principles and goals of the party are a reflection of the ideology it adheres to. Observing political parties in the reform era, the problem that arises is that the ideology of each political party has not been formulated and translated into a real and concrete platform and program. So it is not surprising that there is no difference between one political party and another. This condition causes voters to be unable to differentiate between political parties, for example in relation to national and global political issues (Bryan, 2022) [2]. Each party should have a certain position that is consistent from time to time regarding these various public issues. The ideology of a political party should depend on the interests of the constituents which are the main base of its supporters.

The social basis of party supporters, as stated by Almond, can be based on class (such as the middle class, lower class, or the underprivileged), certain interest groups such as workers, farmers, and entrepreneurs, religious identity, or certain cultural groups such as ethnicity, language or regions. The ideology of political parties can be found in the Statutes and Bylaws (AD/ART) of political parties. It is there that political party ideology can be read and translated into the form of party programs and policies in society. Second, personal and clientelistic leadership. In party leadership, the problem faced is the institutionalization of democratic leadership mechanisms. Political parties in the Reformation era were often attached to the identity of a particular politician who was centered on the figure of the general chairman of the party or the chairman of the party's board of trustees. They held a strong, strategic, and dominant position in the party's management for a long time. This condition gives rise to personal leadership within the party or personalization of political parties so that this figure plays a very important role and influences the party and even becomes the identity and/or image and trademark of the party. This personal leadership in the short term will

indeed strengthen the solidity of the party, but in the long term, it will undermine the party's system and the rules of the game itself. Personal leadership will make political parties which are actually public institutions experience a process of personalization and private nature. The party was treated like a private firm or a family company with a group of administrators. Party leadership becomes difficult to separate from the individuals who become its leaders. There are several factors that lead to the emergence of personal/clientelistic leadership in political parties. First, there is still a strong paternalistic culture among the people, Second, the party's economic resources are still dependent on certain figures as contributors of large funds, Third, the formation of parties that are top-down as political vehicles from certain figures, Fourth, the law on political parties creates administrators a centralized party, namely the highest decision is in the hands of the central board. Then, Fifth, the party leader becomes the party's identity and/or trademark.

Personal leadership is also shown in the process of establishing the Statutes and Bylaws of political parties which are made by a group of elites who are in the central administration and do not involve all cadres, both in provincial and district/city regional administrators. The Statutes and Bylaws of political parties which were formed by a group of elites and did not go through a democratic process apply to all members, administrators, and cadres of the political parties. Because the formation and materials stipulated in the Articles of Association and Bylaws of political parties are not democratic, the political party constitution tends to be used as a tool to put down democratic cadres.

Then there is also internal party conflict. One of the obligations of political parties is to be responsible for overcoming conflicts that occur in society. This is one of the functions of political parties (party as the agent of conflict management). Political parties have a strategic position to overcome differences of opinion, disputes, or competition so that the bad consequences of these conflicts can be prevented in order to maintain social and national integrity or integration. Instead of political parties as agents of conflict management, the picture that often emerges is the internal conflict of the party itself. Next, is political pragmatism. The weak institutionalization of political parties is also due to the political pragmatism of the elite and some members of society. Political events such as legislative general elections (pileg), presidential elections (pilpres), regional head elections (pilkada), and even party congresses cannot be separated from the phenomenon of the emergence of political pragmatism, which is often referred to as transactional politics (Widodo, 2019) ^[10].

It is predicted that the number of participants in the 2024 election will register more than in the previous election. The number of political parties that exist today shows that the desire to establish political parties has not subsided. Political parties keep popping up from time to time. This phenomenon shows the continued desire of political activists to get involved in politics. They understand that by joining parties, the opportunity to be directly involved in policymaking is greater (Widodo, 2018) ^[9]. With this direct involvement, they can realize their ideals or other interests. Regarding whether this desire will continue to be maintained in the path of idealism or it will change drastically and become merely an attempt to gain power,

time will tell. Apart from that, the continued emergence of new parties also indicates that the existing parties have not really represented all the aspirations of the public. The existence of political parties so far has not succeeded in embracing the community with all its interests. It is not surprising that party identity in Indonesia, which indicates the level of closeness between society and parties, continues to be in a low position. The results of the Indonesian Political Indicator survey in 2021 show that only 6.8 percent of respondents feel close to the party (Ferry, 2022) ^[11].

Existing parties are often seen as only representing the interests of certain groups, even at certain moments, they are considered not to represent the interests of society at all. The problems that exist in parties are actually more complex than closeness to society. The problem of closeness occurs because the existence and sustainability of parties depend more on elite corporate networks rather than grassroots networks. Parties are currently in a position of mutual dependence on donors or political investors, who of course expect rewards when these parties are in power (Crouch, 2012) ^[3]. The problem of building closeness with the audience also seems to have the potential to occur in new parties at this time. This is because many parties are supported by human resources which are still in the learning stage in building closeness with the public. This situation is exacerbated by the problems of the parties in building public communication. The root of the problem is that parties tend to place themselves as product sellers and speak in one direction like advertisements rather than treating the public as a balanced dialogue partner (Dommet, 2015).

This approach causes communication to become dry and does not inspire, let alone provide an in-depth understanding of the nature of political life. In addition, the parties that exist today are often criticized as institutions that look elitist. Instead of being an institution that carries out democratic principles on a daily basis, it feels that the internal situation in the party is being controlled by party elites. The current party management is a source of problems because, in the end, it places the main party figures in such a powerful and decisive position, which then causes the internal democracy of several parties to be disrupted. The impact is that the character of democracy is not truly solid in the party. A permissive attitude in politics that reduces the essence of democracy often occurs in our political life. Modest cadre formation is also the root of other problems, especially related to how cadres interpret politics with all the complexities in it. Conditions lead to ideologicalization and understanding of idealistic values to become sober, which ultimately contributes to the development of an understanding of cadres who have strayed from carrying out their roles in political life, including in the election arena. Unfortunately, this condition is accompanied by the ever-increasing temptation of the oligarchy to facilitate political life which is increasingly expensive and pragmatic.

The current political atmosphere is inseparable from the role of the oligarchs. This is a paradox in that democratic political design actually facilitates the existence of oligarchs. This is because political costs are so high and the financial independence of parties or politicians, as well as people's political understanding, continues to be eroded by pragmatism.

This democracy has also become substantially raw because of the continued influence of the oligarchy in our lives. Not

surprisingly, Indonesia is an example of how democracy and oligarchy can support each other.

The desire to be known and attract public attention certainly encourages parties to have better performance, whether in matters of organization, personality, or behavior, including independence from oligarchs. Parties will also take more initiative and take part in the midst of society so that more solid closeness emerges. Especially with the open list election system currently in effect, it certainly encourages party cadres to expand their influence in society. Elections in substance will experience prolonged stagnation in quality. This is because the quality of elections is ultimately inseparable from the behavior of the participants. How hard are we to build a good electoral mechanism, and strengthen the capacity or idealism of organizers to mature the voters, when the situation does not change much from the side of the party as the main actor, then the potential for stagnation is always open.

Then, what is no less important is that political parties in Indonesia are still experiencing obstacles in terms of funding to turn the wheels of the organization of political parties therefore this will make it difficult to achieve the ideals of institutionalized political parties in the democratic system in Indonesia (Toebagus, 2022) ^[8]. The funding of political parties that support the candidates must be absolutely clear. Practically speaking, the factual existence of the party only resonates as if it makes the people a central theme ahead of the campaign and/or when the campaign is carried out through social activities, sports events, demonstrations, or other live service displays that make the people a commodity. However, when they have been elected as representatives of the people and are even in the power elite, they sometimes set the people's hopes lulled by piles of promises amid the uproar of the five-year democratic celebration. In fact, in several legal cases, for example, the elites seem to protect each other, cover up mistakes, and ironically commit corruption in congregations.

According to the Political Party Law, the financial sources for political parties are membership dues, donors, and state assistance.

From the time citizens were free to form political parties ahead of the 1999 elections until the 2009 elections, not a single political party has succeeded in collecting membership dues. Most party funds come from donors, both individual donors and business entities. However, if the list of contributors to political parties and the list of campaign fund contributors reported to the General Elections Commission (KPU) is traced, the amount of funds reported is insignificant compared to the estimated real costs of political parties per year or campaign costs during the election period. So far, all political parties in Indonesia actually have a fixed source of funds. These funds include, among others, the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD), contributions from members of the legislature in the DPR or DPRD, and contributions from regional head candidates contesting regional head elections. In addition, donations from businessmen who are sympathetic to the political party concerned. The amount of APBN assistance for political parties based on Government Regulation (PP) Number 5/2009 in conjunction with Government Regulation number 83/2012 concerning Assistance to Political Parties is IDR 108 per vote. This amount is considered by many to be

too small. Because the financial aid budget from the small State Revenue and Expenditure Budget (APBN) is unable to finance the needs of very large political parties that cause them to seek other sources of funds that are illegal and violate the law, including political party cadres committing acts of corruption which are detrimental to finances, not a few countries.

2. Reconstruction of Regulations Testing the Statutes and Bylaws (AD/ART) of Political Parties' Budget Testing in the Indonesian Constitutional System Based on the Value Of Justice

Each law and regulation regulates different content materials according to the type and hierarchy. A statutory regulation whose material is not in accordance with or contradicts a higher statutory regulation may become a reason for canceling said statutory regulation. Examination of the Statutes and Bylaws (AD/ART) of political parties in the Indonesian constitutional system is not really known, but at the case and lawsuit level, it already exists, namely by submitting an application for testing the Statutes and Bylaws (AD/ART) of the Democratic Party to Supreme Court (MA) in 2021.

Several PD cadres filed a judicial review of the party's Statutes and Bylaws (AD/ART) to the Supreme Court, but due to the review of the legal product in the form of the party's Statutes and Bylaws (AD/ART), it does not constitute the type and hierarchy of statutory regulations as referred to in Article 7 Paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation, the Supreme Court (MA) stated that the review of the Democratic Party's Articles of Association and Bylaws (AD/ART) was not of their competence so that the Supreme Court's decision stated that the application for review of the Democratic Party's Statutes and Bylaws (AD/ART) was declared unacceptable. The Author found that there were at least two things that caused the decision to review the Democratic Party's Statutes and Bylaws (AD/ART) to be declared unacceptable by the Supreme Court. First, the Supreme Court (MA) does not have the authority to review the Statutes and Bylaws (AD/ART) of political parties. Second, the Statutes and Bylaws (AD/ART) of political parties are not included in the type and hierarchy of laws and regulations. In order for the Statutes and Bylaws (AD/ART) of political parties to be tested at the Supreme Court (MA), it is necessary to reconstruct the regulations, namely the reconstruction of the Statutes and Bylaws (AD/ART) of political parties by including them into the type and the hierarchy of laws and regulations. So that entering the Statutes and Bylaws (AD/ART) of political parties into the hierarchy of laws and regulations is very important because they contain several principles, namely:

- a. Laws and regulations that have a higher position can be used as the basis or legal basis for lower-level laws and regulations, or laws and regulations that are under them;
- b. lower-level laws and regulations must originate or have a legal basis from higher-level laws and regulations;
- c. The contents or content of lower-level laws and regulations may not deviate from or conflict with the contents of higher levels of laws and regulations;
- d. A statutory regulation can only be revoked or replaced or amended by a higher level or at least equivalent statutory regulation;

- e. If similar laws and regulations regulate the same material, then the newest regulations must be applied, although it is not explicitly stated that the old regulations are repealed and In addition, more specific regulations must take precedence over more general laws and regulations.

Based on the explanation that has been presented above, the Statutes and Bylaws (AD/ART) of political parties can only be tested for a judicial review if they are placed as statutory regulations whose position is under the Law.

Based on the foregoing, the reconstruction referred to is in Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation which has been amended most recently by Law No. 13 of 2022 concerning the Second Amendment to the Law Law Number 12 of 2011 concerning Formation of Legislation. The importance of the Statutes and Bylaws (AD/ART) of political parties is included as a type of legislation because:

- a. The Statutes and Bylaws (AD/ART) of Political Parties are the basic regulations for political parties or the same as the "constitution" for political parties, and every political party must have Statutes and Bylaws (AD/ART).
- b. A political party is an organization that can recruit citizens to become members of political parties, candidates for members of the House Representatives (DPR) and and Regional House Representatives (DPRD), candidates for President and Vice President, candidates for regional heads and deputy regional heads so that it is only natural that the Statutes and Bylaws of Political Parties stated as a type of statutory regulation and parallel and equal to statutory regulations in the Law on the Formation of Legislation;
- c. If the Statutes and Bylaws (AD/ART) of political parties are placed as a type of statutory regulation, there will be legal recourse for political party cadres who feel aggrieved by the Statutes and Bylaws (AD/ART) of political parties by conducting a review to the Supreme Court and accommodated the review of the Articles of Association and Bylaws (AD/ART) in Law Number 12 of 2011 concerning Formation of Legislation as last amended by Law Number 13 of 2022 concerning Formation of Legislation and Law Number 2 of 2008 concerning Political Parties which has been amended by Law Number 2 of 2011 concerning Political Parties is in order to strengthen the degree of its institutionalization in a democratic political system.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses referred to are in the basic regulations of political parties in the form of Articles of Association and Bylaws (AD/ART) of The Political Parties which are considered material and substance that cannot be legally touched, especially in the form of reviewing laws and regulations in the Supreme Court (MA) even though in substance and materially it has the potential to harm political party cadres and administrators and the AD/ART discussed in the congress and congress arenas are considered not to have involved all political party cadres from the center to the regions so that the AD/ART is not materially democratic and has the potential to harm the

constitutional rights of party cadres political. In the future, a facility is needed to examine the statutes of political parties in order to see their consistency and conformity with Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.

2. In order for the Statutes and Bylaws (AD/ART) of political parties can be reviewed, the Statutes and Bylaws (AD/ART) of political parties must be reconstructed by placing the Statutes and Bylaws (AD/ART) of political parties into the types of laws and regulations as referred to in Article 8 Paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation as amended by Law Number 13 of 2022 concerning Formation of Legislation and amending provisions in Law Number 2 of 2008 concerning Political Parties as amended by Law Number 2 of 2011 concerning Political Parties.

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