

Research Article

Political Parties as Legal Entities: An Academic Debate

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This paper aims to provide an academic brief on the status of political parties as legal entities amid debates on whether political parties stand as private or public legal entities. Based on doctrinal research, the results of the study conclude that although there is an impossibility to firmly place the position of political parties as public or private legal entities considering political parties do have two dimensions, namely private and public, the evidence shows that political parties are more appropriately positioned as legal entities under the public law based on three arguments. First, the party is an important and key institution for the success of democratic work. Second, the relationship between the party and the people is getting further apart, while the relationship between the political party and the state is getting stronger. Third, political parties receive the aid of public funding.

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1. Introduction

At first, the status as legal subjects that comes with the rights and obligations was only attached to human being. But in the development, in addition to humans as bearers of the rights, bodies or associations may also have rights and capacity to perform legal actions like humans. Therefore, apart from humans, this other division legal subjects are also known as legal entities. Thus, the definition of legal subjects includes humans (naturlijke persoon) and legal entities (rechtspersoon).

Legal entities are divided into two forms, namely public legal entities and private legal entities. A public legal entity is a legal entity established under the public law or which concerns the instersets of the public or the state. While a private legal entity is a legal entity established under the civil law that concerns the personal interests of people within the legal entity. Based on this understanding, it can be concluded that a

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private legal entity is a legal entity established by individuals, while a public legal entity is a legal entity held by a general authority (i.e. the state).[1]

However, to distinguish between public and private legal entities in their development cannot only be based on the cause of occurrence, namely public legal entities are established by the government/state, while private legal entities are established by individuals, but it must also be seen based on the field of work. A public legal entity can be deemed so if the field of work is for the public interest, and in return, a private legal entity is defined as one if the field of work is for individual interests.[2] Hence, to determine whether a legal entity is public or private, we need to look at it from various points of view because from a single perspective in which a legal entity may be civil (private), but from another it can also be deemed as public, depending on the context and legal events or relationships evolving around the said legal entity as the subject.

Determining the public or private status of a legal entity as described above implicates the difficulty in determining the legal entity status of a political party. Judging from the background and the characteristics of the organization, political parties are associations of citizens who are included in the scope of civil society. However, when the parties win the election, their primary goal is to obtain access to the government power. The party that controls the government will determine the substance of public policy. Thus in this context, the party is a public body. As a result, scientists have placed the party as an institution in the transition zone between the state (public) and civil society (private).[3] This paper intends to provide an academic brief on the legal entity status of political parties in order to clarify their position and for it to be easier for the government to make arrangements. In the light of that, if a political party is positioned as a public legal entity, then the state has the authority to intervene to thoroughly regulate the affairs of political parties, both externally and internally. On the other hand, if a political party is placed as a private legal entity, the state may only regulate its external aspects, while internal affairs fall within the full authority of the political party to manage.

2. Methods

This research is a doctrinal legal research based on research sources, namely primary and secondary legal materials and supported by non-legal sources.

3. Results and Discussion

If we identify the general development of parties in various countries in the world, political parties have been placed or positioned as public institutions. There are several reasons why political parties are increasingly positioned as public legal entities, some of which are: First, parties are considered as crucial institutions for the success of democratic work, especially in terms of filling public positions; Second, the relationship between parties and the people is getting further apart, while the relationship between political parties and the state (the role of political parties in the state) is getting stronger; and Third, political parties receive the aid of public funding.

3.1. Political Parties as the Main Pillars of Representative Democracy

The existence of political parties has long existed in every system of government, but political parties that function as control over the course of government are a new phenomenon. In the days of ancient Greek democracy, the existence of political parties was considered unimportant because with a very simple concept of statehood it was possible for every citizen to directly participate in government (direct democracy). However nowadays, due to the complexity of running the government and the increasing population, political parties as government actors have become indispensable.[4] Hence, according to modern democratic theory, political parties are seen as the main institutional means to bridge the relationship between the people and the government.

In this modern era, it is difficult to imagine representative democracy without political parties as a fundamental organizational feature.[5] The importance of political parties in the democratic process can be seen from their function within a political system as intermediary institutions, which not only help organize the various powers in the different parliaments, but are also the main source and mechanism in candidate recruitment and interest aggregation and, furthermore again, they perform a representative function that connects voters to the state.[6] Furthermore, Government activities cannot be separated from the role of political parties as entities that provide guarantees for the continuity of government throughout the ages. Although lately there have been big questions about the sustainability of the important role of political parties as liaison organs between the community and government institutions in the midst of diminishing public trust in the performance of political parties, this has not caused the complete neglect of

the functions and important roles of political parties in a democratic country. Political parties remain important subjects of political and constitutional analysis because they still carry out vital functions in an efficient manner. Admitted or not, parties are still the main tool in the formation of the government, articulating various public preferences and mobilizing political activities. At least according to several experts as quoted by Danny Rye, political parties still play several important functions, namely: (i) articulating and aggregating interests, (ii) mobilizing and integrating society, (ii) facilitating general elections and exercising control over the government, and (iv) recruit candidates and political elites and organize government and opposition.[7]

Hence, Peter Mair argues, in modern democracies, whether old democracies or new democracies, politics is about political parties; in other words, the 20th century is not only the century of democratization, but also the century of democratic parties.[8] Gradual appreciation of the positive contribution that parties make to democracy signifies a dramatic change in the conception of the normative relationship of parties and democracy.

3.2. The Relation among the Party, the Society and the State

Another evidence that political parties have shifted from private bodies to public bodies is the decline in their relationship with the people, but their role in the state is getting stronger. As stated by Paul Whiteley, there are two important findings from comparative research on political parties in democratic countries, namely: on the one hand the party is getting closer to the state, and has become part of a state-sponsored (funded) cartel. On the other hand, parties have lost their voluntary organizational style with fewer members and activists. When the party's role in society shows a very significant decline, the party's public face, and especially the party's role in government, becomes stronger and at the same time enjoys significant benefits from this position. This has become a source of contradiction in political parties where sociologically, and in terms of their representative roles, political parties are considered no longer relevant as the quality of the implementation of various important roles and functions continues to decline. On the other hand, namely in government, the position of the party has actually become more special than in previous periods.

The decline in the relationship between political parties and the community can be seen from the attitudes and feelings of the community's attachment to the party

which is getting looser. In addition, the fractured relationship between the party and the community is also reflected in the downward trend in party membership. The majority of the people no longer have any interest in joining political parties. In fact, even if certain parties are able to maintain and even increase the number of their membership, it is not proportional to the ratio of the number of voters in the election. In other words, although the total number of members remains the same, or even increases, the ratio of political party membership to the number of voters in an election remains low.

The shift of the party's position from before as a civil society association, and now moving closer to state institutions can be seen as part of a long-term party adaptation process that is part of a strategy in which parties consciously seek to ensure their own survival. However, the number of members that continues to decline has resulted in a decline in the income of political parties from voluntary membership fees. Therefore, to cover these losses and to ensure that the wheels of the organization continue to turn, political parties inevitably switch to other controlling sources of financing from the state. In other words, the increasingly eroded relations between political parties and civil society have been compensated by political parties by building increasingly intimate relationships with the state.

Thus, the classical assessment of the party is understood as an organization that has a "permanent" linkage with the society and a "temporal" linkage with the state hence the party is considered an entity that does not depend on state resources and should not be controlled by the state, has been largely abandoned. At present, parties can no longer be understood only in terms of their relationship with society, in which their relations are becoming looser day by day, contingent and temporal, but parties must be understood deeper in terms of their relationship with the state, which has become increasingly important both in terms of legitimacy and organizational resources. In other words, the current party is probably best and most appropriate to be understood as an organization that has a "temporal" linkage with society and a more "permanent" permanent linkage with the state.[9]

3.3. Political Parties & Public Funds

As a consequence of the stipulation of political parties as institutions and main pillars of democracy with the main function as professional election machines and the main

vehicle for candidates for public officials thus they can no longer claim to be organizations that fully take care of private interests, the state feels the need to intervene with provide direct financial assistance to ensure the sustainability of the party's existence, create an equal field of competition between parties, and to prevent particularistic forms of financing within the party. Currently, political parties have received funds from taxpayers and from various sources other than membership dues. Thus, another reason why political parties are positioned as public bodies is because they have received direct assistance from state finances.

Traditionally, political parties have relied heavily on funds sourced from the community (members, contributions from individual donors, private businesses or their affiliated associations). Funding political parties from public fund is thus a new phenomenon both in established democracies and in new democracies, which occurred after the post-second world war period. But today, almost all countries have provided direct assistance to political parties, including Indonesia. In fact, in the context of Western Europe, direct subsidies from the state have become a very important resource, so it is not surprising that the results of observations from the GRECO (The Group of States against Corruption) formed by the Council of Europe concluded that the financial dependence of parties on the state is very high. Today, direct subsidies from the state have turned into a more important resource, in fact it has become the principle element for most parties.[10]

The existence of direct state funding has made the party increasingly dependent on public money and state support. While this does not mean that other financial resources have become completely irrelevant, the introduction of state subsidies was a turning point in the financing of political parties which led to a fundamental change in the character of parties, from being considered private associations to being semi-public entities.[10] Hence, state subsidies have contributed to the process by which parties are increasingly seen as essential public goods for democracy and no longer as private voluntary associations that are instruments of civil society.

The increasing trend of modern state interference in the finances of political parties implies two main developments which should be emphasized in particular: on the one hand, parties have become more dependent on the state. The widespread availability of state funds underscores that the dominant conception of democracy today is one in which parties are procedurally necessary and institutions are desirable by democracy, even amid the growing perception that the exercise of their roles and functions may not

necessarily contribute to the quality of democratic representation. The extent of public funding in itself can be considered as an indication of the party's increasing financial dependence on the state.

On the other hand, parties are increasingly managed (regulated) by the state through public law and the constitution. Democratic states have shown an increasing tendency to interfere with parties where the activities, behaviour and internal organizational structures of parties are increasingly defined or dictated by external regulations and state laws. Many countries have begun to formally codify party regulations in their constitutions and adopt specific party laws and/or party finance laws. Thus, the law does not only formally determine the definition of a party, the conditions for being able to participate in elections, and the conditions for obtaining public subsidies, but also regulates the types of activities and behaviours that are allowed and prohibited behaviours as well as determines the organizational structure of the party and its internal procedures. During the second half of the twentieth century, we can observe the progressive codification of party rules in public law, to the extent that Katz argues, the party structure has now become the legal object of state regulation to a degree far beyond what is normally acceptable for private associations in liberal society.[11]

4. Conclusions

Justifying political parties as private organizations that have been going on so far is based on one argument that political parties are organizations formed by citizens, not by state power. However, current state administration developments require us to rethink the position of these political parties because parties in representative democracies have a great number vital functions attached to administering state and community affairs. In fact, political parties have undergone a process of constitutionalisation in the sense that their existence is strictly regulated in the constitution of the state, thus making the parties almost equal to the state institutions. It is impossible for the administration of government to run properly without the participation of parties in it. Given this, it is appropriate if the party in the current context is placed as a public legal entity instead of a private one.

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