

## The Reconstruction of *Subjectum Litis* in Term of Reflections on Constitutional Dissolution of Political Parties

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**Abstract.** *This legal research aims to examine the awarding of political parties currently in force in Indonesia through the Constitutional Court and provide a conclusive elaboration on the comparison of the dissolution of political parties in Indonesia with Germany and Slovenia. The respect for all aspects of human rights has become the obligation of every people in citizen, including respect for the political rights of citizens. In addition, citizens have the right to participate in the dynamics of government, including the possibility of the public applying for the dissolution of political parties. This legal research statute approach, comparative approach, and conceptual approach to legislation were based on primary legal materials, secondary legal materials, and non-legal materials. The study results stated that the Subjectum Litis to the dissolution of political parties was only carried out by executive relations alone; so the public cannot apply for dissolution of political parties. Thus, this may indicate that arbitrariness also reflects the existence of particular political interests that dominate the executive's domination and try to intervene in the juridical aspect. Therefore, the researcher provides recommendations for reconstructing political subjects through various schemes; who can expand the applicant in the process of political dissolution, the applicant in the dissolution of a political party is only extended to all Indonesian people not for their official or position, and the applicant for political dissolution is carried out by the legislative and executive institutions as is practiced in Germany and Slovenia.*

*Keywords: Dissolution; Constitutional; Court; Reconstruction.*

### 1. INTRODUCTION

As the protector of democracy and human rights, the Constitutional Court should have the authority to maintain the purification of constitutional values. One of its forms is by providing guarantees for Human Rights (HAM) as well as providing limitations on government power (limited government).<sup>1</sup> Human rights as part of the rights given by God Almighty to all human beings make every country strive to incorporate universal human rights values into the constitution of each country. The universality value of human rights that is included in the constitution of each country is an implementation of the social contract theory presented by J.J. Rousseau.<sup>2</sup> The inclusion of human rights in the state constitution is based on the idea that the constitution is a written

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<sup>1</sup> Saldi Isra, *Sistem Pemerintahan Indonesia*, 1st ed. (Depok: PT RajaGrafindo Persada, 2019). P. 13

<sup>2</sup> Jason Neidleman, "Politics and Tragedy: The Case of Rousseau," *Political Research Quarterly*, 73.2 (2020): 464–475, <https://doi.org/10.1177/1065912919839144>. p. 470.

document related to the social contract between the community and the authorities (government) that bind themselves into one country by setting the limitations of power contained in the constitution.<sup>3</sup> In the social contract theory, the establishment of a state begins with a social contract between the government and the community.<sup>4</sup> The purpose of the social contract is to ensure that people's rights are not reduced arbitrarily by the government in running the wheels of government.

Human rights in Indonesia are implicitly listed in the constitution, namely the 1945 Constitution of the Republic of Indonesia; especially in Articles 28A to 28J of the 1945 Constitution of the Republic of Indonesia.<sup>5</sup> One of the human rights listed in the 1945 Constitution of the Republic of Indonesia is political rights, as stated in Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads: "Every citizen has the right to have equal opportunities in government". Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia indicates that the guarantee of political rights is for all citizens; so, there is no citizen whose political rights can be discriminated against. In general, political rights are expressed both actively and passively. Active political rights are exercised through direct elections (general elections and regional elections). In contrast, passive political rights can be exercised by participating in running for office in existing political contests, including the right to establish political parties as a means to prepare candidates. Best representatives of the people to be elected in the current political contestation. Thus, the right to establish a political party becomes a necessary right with the right to political participation of citizens.

A political party is a group organized, structured, and have the same perspective and goals concerning social problems, which in this case also involves policy.<sup>6</sup> Thus, the presence of political parties in a democratic country is a must. In this regard, it is intended that political parties can be a "means" to link the interests of the people embodied in political parties with policymakers; in this case, the government. In Indonesia, legal guarantees for political parties can be proven by the existence of regulations regarding the establishment of political parties, which are regulated in Act No. 2 of 2008 concerning Political Parties (hereinafter referred to as Act No. 2 of 2008 concerning Political Parties) and in Act No. 2 of 2011 concerning Amendments to Act No. 2 of 2008 concerning Political Parties (hereinafter referred to as Act No. 2 of 2011 concerning Amendments to Act No. 2 of 2008 concerning Political Parties).<sup>7</sup> This also includes the dissolution of political parties, which is carried out specifically by the Constitutional Court.

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<sup>3</sup> Fradhana Putra Disantara, "Pancasila Juga Volksgeist, Tanya Kenapa?," in *Filsafat Hukum Pancasila (Suatu Kajian Filsafat, Hukum, Dan Politik)*, ed. Irfa Ronaboyd and Fradhana Putra Disantara (Jakarta Selatan: Kreasi Cendekia Pustaka, 2020), 63–68. p. 64-65.

<sup>4</sup> Patrick Riley, "The Legal Philosophy of Jean-Jacques Rousseau," in *A Treatise of Legal Philosophy and General Jurisprudence* (Dordrecht: Springer Netherlands, 2009), 533–51, [https://doi.org/10.1007/978-90-481-2964-5\\_19](https://doi.org/10.1007/978-90-481-2964-5_19). p. 547.

<sup>5</sup> Fradhana Putra Disantara, "The Implementation Of Diplomatic Legal Principles: German Embassy Staff Visiting Islamic Defenders Front (Fpi) Headquarters Case," *International Journal of Law Reconstruction*, 5.1 (2021): 1-24, <https://doi.org/10.26532/ijlr.v5i1.13636>. p. 15

<sup>6</sup> Lili Romli, "Koalisi Dan Konflik Internal Partai Politik Pada Era Reformasi Coalition and Internal Party Conflicts of Reform Era in Indonesia," *Politica*, 8.2 (2017): 95–118. p. 100

<sup>7</sup> Bayu Dwi Anggono, "Perspektif Konstitusi Indonesia Pada Kerjasama Partai Politik Dalam Pemilihan Presiden Dan Wakil Presiden," *Pandecta: Research Law Journal*, 9.1 (2014): 92–112, <https://doi.org/10.15294/pandecta.v9i1.3000>. p. 108

The dissolution of political parties by the Constitutional Court is further regulated through Constitutional Court Regulation No. 12 of 2008 concerning Proceedings for the Dissolution of Political Parties (hereinafter referred to as PMK No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties). PMK No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties in more detail explains that the applicant for the dissolution of a political party is the government represented by the Attorney General and the Minister assigned by the President for that purpose.<sup>8</sup> Meanwhile, the respondent is a political party represented by the leader of the political party that is being asked to disband. Starting from the initial mechanism for dissolving a political party at the Constitutional Court, there is a problem where the applicant for the dissolution of the party is the government. This then raises a question; namely, is it possible for the government to dissolve the political party that carries it even though, for example, it has an forbidden ideology or does not match the state's ideology? This matter then becomes problematic in the mechanism for dissolving political parties, where the government has the potential to dissolve any political party that has views and directions that are different from the government.

This research is based on two previous studies. The first research conducted by Oly Viana Agustine (2018) on the Redesign of the Constitutional Mechanism for Dissolution of Political Parties: A Comparative Study of Indonesia and Germany explained that the authority to disband political parties by the Constitutional Court is an effort to provide restrictions between the rights of association and assembly which are fundamental human rights. Thus, the Constitutional Court may disband a political party following the mechanism in the existing laws and regulations. Because they have never disbanded a political party, the redesign of the dissolution of political parties uses a comparison with the German state.<sup>9</sup> The mechanism for the dissolution of political parties in Indonesia is compared with the dissolution of political parties by the German state. In Germany, the German Constitutional Court (*Bundesverfassungsgericht*) regulates the dissolution of political parties, which is regulated explicitly in Article 13 paragraph (2) BVerfGG. In this case, the dissolution of political parties can be carried out concerning political parties that have ideologies contrary to the state's ideology and against political parties that oppose a free democratic order. The second research was conducted by Sri Hastuti Puspitasari, Zayati Mandasari, and Harry Setya Nugraha (2016) regarding the Urgency of Expansion of Applications for Dissolution of Political Parties in Indonesia. This study emphasizes the urgency of expanding the application for the dissolution of a political party that violates the election regarding the reasons for the application and the parties involved as petitioners in the dissolution of a political party.<sup>10</sup> In addition, this study also emphasizes the trial procedures for the dissolution of political parties due to election violations carried out through five stages of the trial, namely: the preliminary examination stage, the further examination stage to listen to

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<sup>8</sup> Fikri Ilham Yulian, "Problematika Akibat Hukum Pembubaran Partai Politik Oleh Mahkamah Konstitusi," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 9.2 (2020): 74–89, <https://doi.org/https://doi.org/10.14421/sh.v9i2.2206>. p. 86.

<sup>9</sup> Oly Viana Agustine, "Redesign Of Constitutional Mechanism For The Dissolution Of Political Parties: Comparative Study Of Indonesia and Germany (Redesain Mekanisme Konstitusional Pembubaran Partai Politik: Kajian Perbandingan Indonesia Dan Jerman)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 9.2 (2019): 121–139, <https://doi.org/10.22212/jnh.v9i2.1009>. p. 130.

<sup>10</sup> Sri Hastuti Puspitasari, Zayanti Mandasari, and Harry Setya Nugraha, "Urgensi Perluasan Permohonan Pembubaran Partai Politik Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 23, no. 4 (2016): 552–75, <https://doi.org/https://doi.org/10.20885/iustum.vol23.iss4.art2>.

the petitioner's petition, the further examination stage to listen to the respondent's statement, the evidentiary trial stage and the trial reading the verdict.

That study is different from the two previous studies; because this research focuses more on reviewing human rights, especially regarding the political rights of citizens to be a priority in the mechanism for dissolving political parties. In addition, this study also provides an overview of the legal consequences if the submission of a request for the dissolution of a political party can only be made by the government accompanied by a future improvement mechanism for the dissolution of a political party to guarantee the political rights of citizens better. This confirms that this study has differences from the two previous studies because the previous research conducted by Oly Viana Agustine (2018) on the Redesign of the Constitutional Mechanism of Dissolution of Political Parties: A Comparative Study of Indonesia and Germany only explained the mechanism for the future design of the dissolution of political parties by the Constitutional Court. Based on the German Constitutional Court (*Bundesverfassungsgericht*), this research is different from previous research. In addition, if it is related to the research conducted by Sri Hastuti Puspitasari, Zayati Mandasari, and Harry Setya Nugraha (2016) regarding the Urgency of Expansion of Applications for Dissolution of Political Parties in Indonesia, which only explains, in general, the expansion of applications for the dissolution of political parties at the Constitutional Court and focuses on the dissolution of political parties in a series of election activities as well as explaining the mechanism of the *ius constituendum* procedure for the dissolution of political parties into five stages of the trial.

This research is different from the research; because it talks more specifically about the procedure for dissolving a political party, especially concerning the submission of an application for the dissolution of a political party, which the government can only carry out concerning the political rights of citizens. In addition, this research also emphasizes further improvement efforts related to the dissolution of political parties that can guarantee and protect the political rights of citizens. Therefore, this study is different from the two previous studies. This research will further highlight how the efforts to optimize the function of dissolving political parties by the Constitutional Court and its efforts to protect the human rights aspects of citizens. The formulation of the problem regarding this research is: (1) What are the legal consequences of submitting a request for the dissolution of a political party that the government can only do?; (2) How can the Constitutional Court improve the mechanism for dissolving political parties to guarantee the political rights of citizens? This study aims to answer the formulation of the problem that has been described previously. Therefore, the objectives of this study are (i) Knowing the legal consequences of submitting a petition for the dissolution of a political party, which the government can only carry out, (ii) Providing reconstruction or improvement for the Constitutional Court in the mechanism for dissolving a political party to guarantee the political rights of citizens.

## **2. RESEARCH METHODS**

This research was structured using normative juridical research, namely research that was focused on examining the application of rules or norms in positive law. The normative legal analysis of law was generally influenced by pure jurisprudence and

positivism.<sup>11</sup> This concept was considered to be the same as the written norms created and promulgated by the law-approved body or official. This view views the law as a normative system that is independent, closed, and separated from the real life of society. This study used primary legal materials, secondary legal materials, and non-legal materials. This research focused on the statute approach, comparative constitutional, and conceptual approaches.

### 3. RESULTS AND DISCUSSION

#### 3.1 The Existence of Political Rights as part of Human Rights

Political rights are part of human rights that intersect with the right to government participation. Participation in government by citizens can be done directly or indirectly. In general, who can understand political rights, including the right to participate in government and vote in democratic mechanisms periodically in a country, whether through general elections, regional head elections, or other elections. Political rights are also related to human existence as social beings (*zoon politikal*).<sup>12</sup> In social life, the right to express such as expressing opinions forming associations is one of the rights that can reflect community participation. Community participation is essential in anticipating democracy which seems like "*majority rule, majority rights*"; so sometimes minority rights. Community participation is one of the most critical factors in maintaining a balance between "*rule and right*".<sup>13</sup> Thus, political rights are related to the rights of citizens to play a role in efforts to carry out future arrangements for a state institution. Political rights are guaranteed in international law, described in various international conventions or documents, including the Universal Declaration of Human Rights 1948 (hereinafter referred to as the Universal Declaration of Human Rights or UDHR) and the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR). Article 20 paragraph (1) of the UDHR states that "*everyone has the right to freedom of peaceful assembly and association*." Article 20 paragraph (1) of the UDHR explains that everyone has the freedom of association and assembly without violence.<sup>14</sup> Freedom of association and assembly is also related to the freedom to form political parties.

Thus, the Universal Declaration of Human Rights guarantees the right to establish political parties. In addition, Article 21 of the ICCPR explains that the guarantee of the right to peaceful assembly and association is also guaranteed and protected.<sup>15</sup> Political rights are part of human rights, divided into three generations of human rights in its development. Karel Vasak divides the development of human rights into three

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<sup>11</sup> A'An Efendi, Dyah Octorina Susanti, and Rahmadi Indra Tektona, *Penelitian Hukum Doktrinal* (Surabaya: Laksbang Justitia, 2019). p. 51.

<sup>12</sup> Sue Donaldson, Janneke Vink, and Jean-Paul Gagnon, "Realizing Interspecies Democracy," *Democratic Theory*, 8.1 (2021): 71–95, <https://doi.org/10.3167/dt.2021.080105>. p. 80

<sup>13</sup> Pierre Thielbörger, "The 'Essence' of International Human Rights," *German Law Journal*, 20.6 (2019): 924–939, <https://doi.org/10.1017/glj.2019.69>. p. 934.

<sup>14</sup> Saleh Raed Shatat, "International Law Internations and Human Rights," *Jurnal Pembaharuan Hukum*, 6.2 (2019): 274–284, <https://doi.org/10.26532/jph.v6i2.9259>. p. 270

<sup>15</sup> Nahuel Maisley, "The International Right of Rights? Article 25(a) of the ICCPR as a Human Right to Take Part in International Law-Making," *European Journal of International Law*, 28.1 (2017): 89–113, <https://doi.org/10.1093/ejil/chx010>. p. 103

generations;<sup>16</sup> namely *the first generation* (human rights, which are the first generation, namely: civil rights and political rights/liberty), the second generation (human rights, which are *the second generation*, namely: cultural, social, and economic rights/egalitarian), and *the third generation* (human rights which are the third generation), namely: solidarity rights. Division by age; the division of human rights is also based on categories. The division of human rights based on types carried out by Roy Gregory and Philip Gidding divides substantive rights into substantive rights (substantive rights) and procedural rights (procedural rights).<sup>17</sup> Substantive rights consist of rights from the first generation to the third generation of human rights, as Karel Vasak.<sup>18</sup> Meanwhile, procedural rights are rights for citizens to obtain good administrative services and the right to be heard, file complaints, and obtain remedial action from the government in the event of a loss to someone.<sup>19</sup>

With their universal nature, human rights cannot be denied as a crystallization of various ideologies. As stated by Antonio Cassese,<sup>20</sup> the Universal Declaration of Human Rights is a 'meeting point' and a "*compromise point*" between different interests and various developments of human thought. Even though it is a "*compromise point*" universal human rights values are still dominant over the importance of western countries, which are usually liberal. However, the guarantee of cultural, economic, and social rights also emphasizes that the UDHR also contains values with socialism. Different views on these different ideologies make the UDHR multi-interpretation and inconsistency in its application. The difference in opinions between eastern countries, which tend to be socialist and is more dominant in social and economic rights, and western lands, which tend to be liberal with a priority on political, individual, and civil rights, a point is reached where human rights are seen as a comprehensive unit both for individuals and for groups. Therefore, the protection of human rights must also be carried out, both for groups and each individual. Thus, political, civil, economic, cultural, and social rights must be adequately implemented (*inseparably*) and need each other. This can be exemplified, for example, in the fulfillment of political rights, then to become a public official; it is necessary to fulfill first the right to social and cultural rights, especially related to the word access to proper education.

### **3.2 The Reconstruction of the *Subjectum Litis* as Reflections on Germany and Zealand and Efforts to Disband Political Parties Constitutionally**

The dissolution of political parties in Indonesia is regulated in Constitutional Court Regulation No. 12 of 2008 concerning Procedural Procedures for Dissolution of Political Parties (hereinafter referred to as PMK No. 12 of 2008 concerning Dissolution of

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<sup>16</sup> Spasimir Domaradzki, Margaryta Khvostova, and David Pupovac, "Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse," *Human Rights Review*, 20.4 (2019): 423–443, <https://doi.org/10.1007/s12142-019-00565-x>. p. 426

<sup>17</sup> Roy Gregory and Philip Giddings, *The Ombudsman and Parliament: A History of the Parliamentary and Health Service* (London: Politico's Publishing Ltd, 2002). p. 88

<sup>18</sup> Domaradzki, Khvostova, and Pupovac, "Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse." p. 431

<sup>19</sup> Jeffrey W. Howard, "Free Speech and Hate Speech," *Annual Review of Political Science*, 22.1 (2019): 93–109, <https://doi.org/10.1146/annurev-polisci-051517-012343>. p. 106.

<sup>20</sup> Antonio Cassese, *Human Rights in a Changing World* (Philadelphia: Temple University Press, 1990). p. 115

Political Parties).<sup>21</sup> The dissolution of political parties as part of efforts to reduce the political rights of citizens must be carried out through the applicable legal mechanism. The legal mechanism in the dissolution of political parties is needed to 'safeguard' the human rights of citizens, in this case, the political rights, so that they are not reduced arbitrarily by the authorities. Therefore, the dissolution of political parties in Indonesia is carried out by the Constitutional Court as one of the institutions of judicial power.<sup>22</sup> Matters that are important for events at the dissolution ceremony, the Constitutional Court can function as a guardian of the constitution and a guardian of democracy. Although the dissolution of political parties in Indonesia is regulated in PMK No. 12 of 2008 concerning Dissolution of Political Parties, the dissolution of political parties is carried out through adjudication of constitutional rights, where only the government has the right to be the *Subjectum Litis* in the examination.

The existence of authority to dissolve a political party by the Constitutional Court is to maintain the constitutionality of the law and provide legal certainty in the dissolution of a political party with a valid basis. In addition, PMK No. 12 of 2008 concerning Procedural Procedures for the Dissolution of Political Parties also explains what who can use indicators to disband a political party, namely: (a) the ideology, principles, objectives, programs of political parties are contrary to the 1945 Constitution of the Republic of Indonesia, and/or (b) political activities are contrary to the 1945 Constitution of the Republic of Indonesia or the consequences thereof in 1945. Thus, who can say that the government's stipulation as a *Subjectum Litis* in the dissolution of a political party is possible because of efforts to assess whether a political party is likely. Then, difficult to do with the ideology of the state and the 1945 Constitution of the Republic of Indonesia carried out by a legitimate institution and can be done in this case. The government in the object of the study of constitutional law and government science is divided into two meanings, namely in a narrow sense and in a broad sense.<sup>23</sup> For a bit of reason, the government is one of the branches of state power that practices administrative law.<sup>24</sup> Meanwhile, in a general sense, the government is all state apparatus consisting of the branches of executive, legislative, and judicial powers. In Article 1 number 2 PMK No. 12 of 2008 concerning the Dissolution of Political Parties, what the government means is the central government.

The definition of government as the center of this development is that what can be used as research in testing the dissolution of political parties is the government in the executive sense. The government as a legal subject in the dissolution of a political party can be caused by a law that violates the political rights of the state, which is the establishment of a political party;<sup>25</sup> who can find this because by presenting the legal standing of the government as the only *Subjectum Litis* in the dissolution of political parties, the government can abuse power, especially on the application of political

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<sup>21</sup> Widayati, "Pembubaran Partai Politik Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum*, 16.2 (2011): 612–639. p. 620

<sup>22</sup> Rifandy Ritonga, "Pembubaran Partai Politik Terhadap Sistem Demokrasi Di Indonesia," *Pranata Hukum*, 10.2 (2015): 99–108. p. 103

<sup>23</sup> Teuku Saiful Bahri Johan, *Hukum Tata Negara Dan Hukum Administrasi Negara Dalam Tataran Reformasi Ketatanegaraan Indonesia*, 1st ed. (Sleman: Deepublish, 2018). p. 112

<sup>24</sup> Neil Parpworth, *Constitutional and Administrative Law*, 11th ed. (New York: Oxford University Press, 2020). p. 132

<sup>25</sup> Jure Vidmar, "Multiparty Democracy: International and European Human Rights Law Perspectives," *Leiden Journal of International Law*, 23.1 (2010): 209–240, <https://doi.org/10.1017/S0922156509990392>. p. 215.

dissolution that differs in direction and political views from the government. This is because the executive power (of course with legislative power) is directly elected by the people and through specific political mechanisms; of course, it cannot escape its independence from various interests and pressures from other parties<sup>26</sup>.

Therefore, granting *Subjectum Litis* authority only to the government (in this case, the executive) can lead to injustice; because it may be possible for the government to use its jurisdiction to become lytic in the dissolution of a political party to dissolve a political party that is in opposition to or contrary to the government's program or view. The opposite is true that the government may not dissolve the party that carries it, even though the government bearer has fulfilled the elements of a political party that can be dissolved according to PMK no. 12 of 2008 concerning the Dissolution of Political Parties. Optimizing the function of the Constitutional Court in the process of dissolving political parties needs to be emphasized and expanded. Therefore, efforts to reconstruct the position of the Constitutional Court in the dissolution of political parties need to obtain legal comparisons from other countries that have the same tendency as the dissolution of political parties. Comparative law as a discipline and a branch of legal science is needed to deal with the increasing needs of people's lives.<sup>27</sup> In this case, comparative law is used as a reference and a basis for how legal practices in other countries can be applied and adapted to others. This can be known because there are various legal systems in the world, including the Civil Law system (Romano-German) or what is often known as the Continental European legal system, the primary common law legal system by Anglo Saxon countries (Including England, America, and Colonial countries), as well as several legal systems that have developed in several countries, for example, the Islamic legal system, and the customary law system;<sup>28</sup> that has developed in some remote areas in Indonesia. Therefore, the comparative law in this paper focuses more on comparing the constitution and the procedure for dissolving political parties carried out by the Constitutional Court with comparisons with other countries.

The countries used for comparison in this study are Germany and Slovenia. The country of Germany is used as a comparison in this study because of the legal system; Germany is a country with the European-Continental law family or civil law;<sup>29</sup> so it has similarities with Indonesia with the dominant legal system in civil law. In addition, the idea of establishing the Indonesian Constitutional Court was also influenced by the German Constitutional Court, which focused on the characteristics of the 'Kelsenian Court'; which also tends to be adopted by the Indonesian Constitutional Court. Therefore, the first comparison of countries in the mechanism of dissolution of political parties in this paper is Germany. Besides Germany, the following comparison is with the State of Slovenia. Slovenia was selected as the object of comparison; because the Slovenian Constitutional Court also seeks to protect the rights of freedom and human

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<sup>26</sup> Chuasanga A., Ong Argo Victoria. (2019). *Legal Principles Under Criminal Law in Indonesia and Thailand*, Jurnal Daulat Hukum, Vol 2, No 1 (2019) <http://jurnal.unissula.ac.id/index.php/RH/article/view/4218>

<sup>27</sup> Mauricio García-Villegas, *The Powers of Law: A Comparative Analysis of Sociopolitical Legal Studies* (Cambridge: Cambridge University Press, 2018). p. 118

<sup>28</sup> Andrew Harding, "Theories of Law and Development," *Asian Journal of Social Science*, 46.4–5 (2018): 421–444, <https://doi.org/10.1163/15685314-04604003>. p. 426

<sup>29</sup> Nadzirotus Sintya Falady, "Perbandingan Hukum Pembubaran Partai Politik Jerman Dan Indonesia," *Jurnal Ilmiah Penegakan Hukum*, 7.1 (2020): 44–52, <https://doi.org/10.31289/jiph.v7i1.3651>. p. 49



rights broadly and comprehensively.<sup>30</sup> This is also the case with the Indonesian Constitutional Court, which tries to optimize court doctrine and protect human rights through its decisions. Therefore, this comparison of the dissolution of political parties is based on the model of the Constitutional Court and the guarantee of human rights in the decisions of the Constitutional Court. So, according to the model of the Constitutional Court, the State of Germany was made by comparison because it has the same Constitutional Court model as Indonesia, namely the *Kelsenian Model*;<sup>31</sup> At the same time, Slovenia is a comparison because of the spirit of the decision of the Constitutional Court which has the essence of protecting human rights such as the Indonesian Constitutional Court.

The Constitutional Court was established in conjunction with the passage of the Basic Law in 1949. The German Federal Constitutional Court's powers are regulated in detail and clearly in Article 93 of the 1949 Basic Law.<sup>32</sup> Based on this provision, one of the powers of the German Constitutional Court is to dissolve political parties. The dissolution of a political party by the Constitutional Court is regulated in detail in Article 21 of the Constitution, which contains:<sup>33</sup>

*"...(2) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality."*

Furthermore, in paragraph (5) it is stated that *".....(5) Details must be regulated by federal law....."*. There, further arrangements regarding the dissolution of political parties are further regulated in the law of the Federal Constitutional Court. German Federal Law (Act on the Federal Constitutional Court or *Bundesverfassungsgerichtsgesetz*) (hereinafter BVerfGG) in Chapter 2 on the Prohibition of political parties; the exception from state funding in paragraph (1) states that:<sup>34</sup>

*"....(1) Applications for a decision on whether a political party is unconstitutional (Article 21(2) of the Basic Law) or excluded from state funding (Article 21(3) of the Basic Law) may be filed by the Bundestag, the Bundesrat or by the Federal Government. The application for a decision on the exclusion from state funding may be filed by way of a subsidiary alternative application attached to the application for a decision on the unconstitutionality of political party"*.

Based on Chapter 2 paragraph (1), it is inevitable that in Germany three institutions can be carried out, namely: the *Bundestag* (Parliament), the *Bundesrat* (Federal Assembly), and the Federal Government (Federal Government). Thus, the *Subjectum*

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<sup>30</sup> Matej Avbelj, "Contextual Analysis of Judicial Governance in Slovenia," *German Law Journal*, 19.7 (2018): 1901–1930, <https://doi.org/10.1017/S2071832200023270>. p. 1907.

<sup>31</sup> Donald P. Kommers, "An Introduction to the Federal Constitutional Court," *German Law Journal*, 2.9 (2001): 1–4 <https://doi.org/10.1017/S2071832200003515>. p. 2

<sup>32</sup> N. Petersen, "The German Constitutional Court and Legislative Capture," *International Journal of Constitutional Law*, 12.3 (2014): 650–669, <https://doi.org/10.1093/icon/mou040>. p. 658.

<sup>33</sup> Bénédicte Laumond, *Policy Responses to the Radical Right in France and Germany: Public Actors, Policy Frames, and Decision-Making* (New York: Routledge, 2020). p. 25

<sup>34</sup> Laumond. p. 27

*Litis* to the dissolution of political parties in Germany is the government in a broad sense. So that it further strengthens the three state powers in the process of disbanding political parties and maintaining a system of checks and balances.

The Slovenian Constitutional Court has its way of dissolving political parties. In the constitution, arrangements regarding the Slovenia Constitutional Court are regulated in Articles 160-167 of the Constitution.<sup>35</sup> One of the Slovenian Constitutional Court's powers in the form of disbanding political parties is stated in Article 160 concerning the Powers of the Constitutional Court. In Article 160, it is said that "*.....about the unconstitutionality of the actions and activities of political parties.....*" which indicates that the Slovenia Constitutional Court can dissolve a political party related to the actions and activities of a political party.<sup>36</sup> Further regulation regarding the mechanism for dissolving political parties in Slovenia is contained in the Law on the Constitutional Court Chapter VIII Deciding the unconstitutionality of the Actions and Activities of Political Parties Article 68.<sup>37</sup> In Article 68 the mechanism for the dissolution of political parties is explained in its entirety, namely:

- (1) *"Anyone may lodge a petition, and the applicants referred to in Article 23 of this Act may submit a request to review the unconstitutionality of the acts and activities of political parties.*
- (2) *The petition or request must state the disputed acts or factual circumstances regarding the unconstitutional activities of the political party.*
- (3) *The Constitutional Court abrogates the unconstitutional act of the political party by a decision and prohibits the unconstitutional activities of the political party by a decision.*
- (4) *The Constitutional Court may order that the political party be removed from the register of political parties by a two-thirds majority vote of all judges".*

Based on Article 68 above, it is inevitable that anyone (anyone) can be an applicant in the case of dissolving a political party in Slovenia. All of these people can apply for the dissolution of a political party by attaching evidence related to the activities of the political party requested for voiding to carry out actions or activities contrary to the Slovenian constitution (unconstitutional). The granting of people's rights to become petitioners in the dissolution of political parties in Slovenia aims to strengthen human rights in Slovenia. It can be understood that in its history, Slovenia, which was part of the Yugoslav Socialist Republic, felt the pressures of the state, which at that time tended to curb human rights.<sup>38</sup> In addition, when Slovenia joined Yugoslavia, the countries implemented the concept of communism for all their people.<sup>39</sup> The existence of this ideology is not guaranteed and protects human rights, so when proclaiming

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<sup>35</sup> Igor Kaucic and Ciril Ribicic, *Referendum and the Constitutional Court of Slovenia* (Regensburg: Universitätsverlag Regensburg, 2016). p. 143

<sup>36</sup> Kaucic and Ribicic. p. 144

<sup>37</sup> Jernej Letnar Čerňič, "Authoritarian Dimension of Judicial Ideology of the Slovenian Constitutional Court," *Hrvatska i Komparativna Javna Uprava*, 20.4 (2020): 733–760, <https://doi.org/10.31297/hkju.20.4.6>. p. 740

<sup>38</sup> Nejc Brezovar, "Judicial Activism Contributing to the Understanding of Social State Principle(S) – Constitutional Court of Slovenia at the Crossroads," *DANUBE: Law and Economics Review*, 8.1 (2017): 19–30, <https://doi.org/10.1515/danb-2017-0002>. p. 24.

<sup>39</sup> Nevenka Troha, "Slovenia. Occupation, Repression, Partisan Movement, Collaboration, and Civil War in Historical Research," *Südosteuropa*, 65.2 (2017): 334–363, <https://doi.org/10.1515/soeu-2017-0021>. p. 350.

independence in 1991, Slovenia began to influence great attention to the values of human rights.<sup>40</sup> Therefore, it is natural that the Slovenian Constitutional Court allows everyone to apply the mechanism for dissolving a political party to affirm and emphasize the essence of human rights.

Germany and Slovenia are used as a reference for comparison of countries in the mechanism for political dissolution at the Constitutional Court, based on the consideration that in both countries, the *Subjectum Litis* of the dissolution of political parties is extended not only to the government in the executive sense, but also as implemented by the government in a broad sense. which includes the legislative and executive bodies. In addition, if you look at the practice of dissolving political parties in Slovenia, everyone can become an applicant. This is to guarantee and protect the political rights of citizens. The following are the differences between the dissolution of political parties in Indonesia, Germany and Slovenia:

No.	Distinguishing indicators	Indonesian Constitutional Court	German Constitutional Court	Slovenian Constitutional Court
1	Legal Basis	Article 24 C of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 3 of the Regulation of the Constitutional Court Number 12 of 2008.	Article 21 Basic Law.	Articles 160-167 Basic Constitutional.
2	<i>Subjectum Litis</i>	Government in a narrow sense (executive).	Government in a broad sense, includes: <i>Bundesrat</i> , <i>Bundestag</i> , and Federal Government.	Everyone.
3	Reasons for Dissolution of Political Parties	The ideology, principles, goals, programs, and activities of political parties are contrary to the 1945 Constitution of the Republic of Indonesia	It is against the democratic order and threatens the existence of the state.	Carry out activities that are contrary to the constitution

Therefore, efforts to reconstruct the *Subjectum Litis* of the dissolution of political parties in the Indonesian Constitutional Court can at least look at the German State where the applicant for the dissolution of political parties is the government in a broad sense, including executive and judicial institutions. This is important to maintain checks

<sup>40</sup> Gregor Kranjc, "Talking Past Each Other: Language and Post-World War II Killings in Slovenia," *Journal of Genocide Research*, 20.4 (2018): 565–586, <https://doi.org/10.1080/14623528.2018.1527080>. p. 575.

and balances between state institutions and ensure that certain institutions do not dominate the mechanism for dissolving political parties that political interests may bias. In addition, the mechanism for dissolving political parties can also be optimized, as happened in Slovenia, where everyone can apply for it. This is intended to maximize the function of community participation and human rights. Community participation is needed because the impact of the activities of a political party is felt directly by the community, so the community can judge whether the actions of a political party are deviant or not. In addition, guaranteeing human rights, especially political rights, must be carried out with full participation and responsibility. This means that community involvement in the mechanism for dissolving political parties is essential to minimize the possibility of the arbitrariness of people's representatives who sit in the legislative and executive institutions.

The reconstruction of the mechanism for dissolving political parties in the Constitutional Court can be carried out with three alternative improvements. *The first alternative*, the applicant in dissolving a political party, can be expanded to become: the President, who can be represented by the Attorney General and/or the Minister, House of Representatives of the Republic of Indonesia (DPR), Regional Representatives Council (DPD), and/or the entire Indonesian people. *The second alternative*, that the applicant in dissolving a political party is only extended to all Indonesian people. In this case, the Government or the leadership of state institutions can still apply for the dissolution of a political party but on behalf of an individual/not the name of an institution or position. While the third alternative, the petitioner in the dissolution of a political party is not only extended to the Government in a narrow sense, at least it is expanded to become a government in a broad sense, which is carried out by the legislative and executive institutions as is practiced in Germany. Therefore, in this *third alternative*, the applicants for the dissolution of political parties are expanded to become: the Government (the President, who can be represented by the Attorney General and/or the Minister), DPR, and DPD. Of the three alternatives above, the author agrees more and leans towards the first alternative, a mixed reconstruction of the German and Slovenian types. This is intended to maintain the checks and balances system and maintain the value of human rights in the form of the political rights of citizens.

#### **4. CONCLUSION**

Dissolution of political parties as stated in PMK No. 12 of 2008 concerning the Dissolution of Political Parties so as not to become mere domination of one power and guarantee human rights, the reconstruction of the dissolution of political parties can be carried out with alternative options, namely: the first alternative (a combined system alternative) Germany and Slovenia), namely: the applicant in the process of dissolving the party can be expanded to The President who can be represented by the Attorney General and/or the Minister, DPR, DPD, and/or the entire Indonesian community, The second alternative, the applicant in the process of dissolving a political party is only extended to all Indonesian people, not to their official or position. This means that the institution chairman can also apply for the dissolution of a political party as long as the registration is in his own name. The third alternative, the request for the dissolution of political parties to be expanded not only to the government in a narrow sense, at least to be extended to the government in a broad sense carried out by the legislature and executive as implemented in Germany.

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