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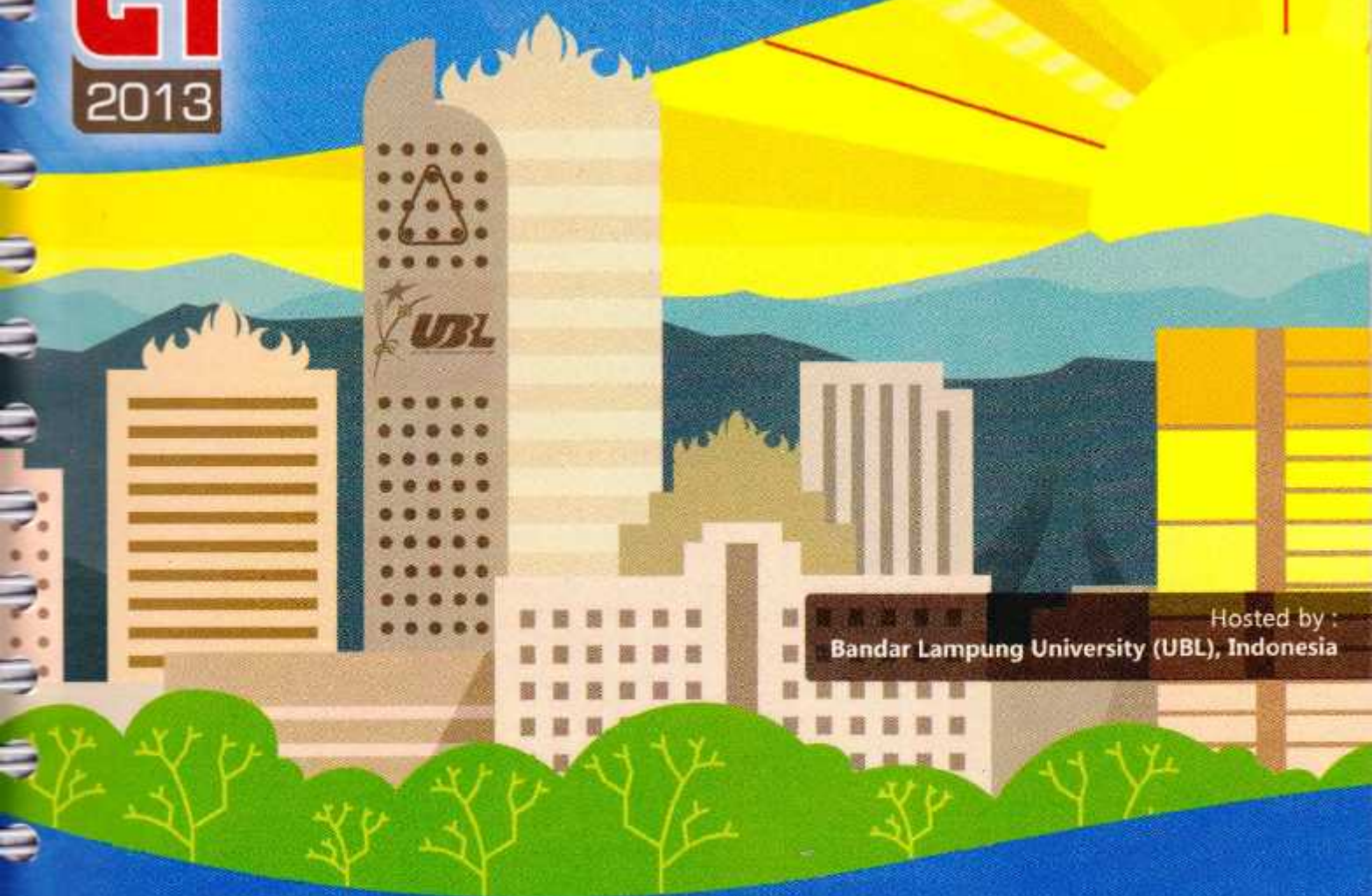
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THE FIRST
INTERNATIONAL CONFERENCE ON
**LAW, BUSINESS
& GOVERNANCE**

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
INDONESIA

ICoN-BG
2013



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ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013
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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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NORMATIVE JUDICIAL ANALYSIS OF DISSOLUTION OF POLITICAL PARTIES TOWARDS DEMOCRATIC SYSTEM IN INDONESIA

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The existence of political parties as a manifestation of the freedom of association is needed in a democracy . However , based on existing practices and regulations , political parties turned out to be dissolved . The dissolution of political parties would have to be done based on laws and regulations, procedures , and legal effect of the dissolution of a political party .

The problem of this research is the process of dissolution of political parties in the colonial period up to the period of reform in Indonesia and the impact of the dissolution of political parties in Indonesia against the democratic system in Indonesia.

This research method is normative, using secondary data obtained from the literature (library research) , historical studies and data analysis .

Dissolution of political parties differ each period, in the period before the reform dissolution of political parties without a clear legal mechanism, unlike the case with the reform era to the present arrangements concerning the dissolution of political parties is clearly stipulated in the Constitution of the Republic of Indonesia Year 1945 , the Article 24C one of the authorities of the Constitutional Court is to decide on the dissolution of political parties , more clearly set out in the judicial procedure in the dissolution of political parties of the Constitutional Court of the Republic of Indonesia Number . 12 of 2008 . Effect of dissolution of political parties into the democratic system in Indonesia did not have an impact on the democratic system that applied in Indonesia. Because dissolution of political parties will only be done if a party

Political conflict with the fundamental purpose and the constitutional order . Even more than that on the dissolution of a political party that opposed the aim to protect democracy itself , constitution , national sovereignty , national security and national ideology .

Arrangements should political parties in the future will better ensure and protect the freedom of association , assembly , opinion and expression . And it's not just the government that granted the privilege to be able to apply for dissolution of political parties , but also citizens are given the same rights to dismiss political parties and threatens harm the state constitution.

Keywords : Democracy, Political Parties Dismiss

1. BACKGROUND

Freedom for assembly and association is the human right which is regionally and universally recognised. It is included in the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹

Rooted in the agreements, an organization is allowed to set its basic and domestic system. The organisation is also permitted to elect representatives, who will administer and formulate its agenda without any interference from other authorities. It is protected from dissolution or restriction, and allowed to be a member of federations, confederations and organizations.

The freedom of assembly and association is also subject to certain restrictions as to particular boundaries, which specifically pertain to the two types of freedom; or common constraints of human rights.

The Constitution of Republic of Indonesia 1945 has given a firm assurance that everyone has the right to freedom of assembly, association and speech. It is explained in the Article 28 E, Paragraph 3. Previously, the guarantee was not asserted in the Constitution, or regulated by an act. It implied that no

¹ United Nations, *Universal Declaration of Human Rights (UHR)*, tahun 1948

definite guarantee existed. The right to freedom of assembly, association, and speech, at the time, could not be recognised as human right which should be held by a democratic constitution.

Nevertheless, it immediately changed after the Constitution revised in 2000. The article was added to strictly declare that the state guarantees protections, respects and supports to the social livelihoods. In details, the freedom also involves an assurance for expressing opinions and aspirations of others' ideas by convening people with same ideals.

Political party is the result of the guarantee. In this notion, the political party is essential for the democratic system of Indonesia. They play a strategic role between the government and its people. Schattscheider says that political parties actually do define the democracy.

In general, a fine system of political party crucially determines the constitutional performance with the principle of checks and balances. Related to the governmental activities, the political party is also critical instruments and media, similar to other factors such as press.

The fact that democratic process is essentially determined by political parties makes them an integral part of the democratic constitutional system and the national dynamics. They become more powerful to struggle for their common interest and to confront the opposition because small and fragmented groups could be consolidated in them.

According to Yves Meny and Andrew Knapp, a governmental system with one political party is impossibility agreed to a democratic system. Miriam Budiardjo says that political scientists have explained the four functions of political party as the results of the freedom for assembly, association, and speech: (i) a means of political communication, (ii) political socialisation, (iii) a means of political recruitment , and (iv) conflict settings. The four functions are interlinked.²

The political party also has weakness. It potentially tends to be oligarchic. It acts not only for the public, but also its own interests, eventually scarifying the public importance. Robert Michael proposes that it is called an iron force in an organisation. Addressing the problem, a supporting mechanism is required. First, an internal mechanism could ensure democratisation through members' participation of political parties in decision-making processes. Secondly, the political party should be open to involve the public aspiration in formulating decisions and policies defended by the party. Third, state organisations' public service, accountability and transparency should be increased. Fourth, free press must become more professional and informative. Fifth, the guarantee of freedom for responsible assembly, association and speech ought to be firm.

In line with the explanation, the existence of political parties is the result of democracy and the "assured" freedom of association. However, considering the present practices and regulations, political parties are able to be dissolved. The guarantee is constitutionally regulated, but the details of Article 28 E of the Constitution of Republic of Indonesia 1945 did not merely provide a guarantee, but limit the freedom. Therefore, this study raises the issue on "normative juridical analysis of dissolution of political party toward the democratic system in Indonesia"

2. FORMULATION OF PROBLEMS

The problems are formulated as follows:

- a. How are the dissolution processes of political parties in Indonesia from the colonial periods to the reformation era?
- b. What are the legal consequences of the dissolution of political parties toward the democratic system in Indonesia?

3. DISCUSSION

1. The dissolution process of political parties in Indonesia from the colonial periods to the reformation era

- a. The Dutch colonial era

Indonesian people have recognised political parties since the pre -independence era. It is influenced by the European modernization. The Great Britain was the first country introducing the concept of political party, which later extended over Europe, America and the world³. The emergence of political party in Indonesia can be understood as an impact of social, politics and

²Yves Meny and Andrew Knap, *Government and Politics in Western Europe*, Oxford University Press, 1998.

³ Jimly Asshiddiqie, *Kemerdekaan Berserikat Pembubaran Partai Politik dan Makamah Konstitusi*, Konstitusi Press, Jakarta, 2006. Hlm 159.

economic changes in the Dutch and the East Indies. The most relevant departure point is the ethical politic policies implemented by the Dutch colonial government. Although any study in politics was a taboo for the colonial government, the young scholars were interested to get involved in the politic-oriented movement. The movements of political parties initiated in the late 19th century; and the beginning of the 20th century has marked as the new phase in the history of Indonesia, called the era of national revival. The movement which aimed to the independence of Indonesian mostly metamorphosed into political parties.⁴

Since the adoption of ethical politics, some political parties had became quite prominent among others, such as Partai Serikat Islam Indonesia (PSII), *Insulinde*, *Indische Partij (IP)*, Partai Komunis Indonesia (PKI), Partai Nasional Indonesia (PNI), Partai Bangsa Indonesia (PBI) and Partai Indonesia (Partindo). Most of them were political parties which had grown during the Dutch colonial ages. Among them, three parties had disbanded namely IP, PKI and PNI.

First, in 1913 IP was dissolved by the Dutch colonial government because IP is considered to damage the public concord and order. Second, it was also caused by the uprising of PKI in January 1927, which was put down by the Dutch. The Dutch colonial government banned the party in its colonies. Some of its leaders fled aboard, while the others were executed or exiled. Third, the dissolution of the PNI, which was founded by Sukarno after the failed rebellion of PKI, was caused by Soekarno's radical action in promoting the independence of Indonesia over the country. It raised anxieties of the Dutch colonial government. In October 1929, the Dutch colonial government banned the party. On January 9th, 1930, its leaders including Sukarno were arrested in Bandung.

b. The Japanese colonial era

At the era, there was no dissolution of political party, but all political, organisational and governmental activities were strictly prohibited. Regular meetings are also prohibited. The political parties had to be subject to the edict of the Japanese.

c. The reign of Sukarno (the old order)

After the independence of Indonesia, parties who had been previously dormant or frozen by the Japanese government were activated with the Government Edict 3 November 1945. The edict was delightfully responded by political figures. This excitement was not experienced by those who had managed the political parties since the pre-independence era, but also other figures who then established political party. There were about 40 political parties founded and participating in the national political arena.

In the old order, there are two parties dissolved, namely Masjumi and PSI. The both parties are dissolved with the Presidential Decree No. 200 of 1960 and No. 201 of 1960. The dissolution was caused by their involvement in the rebellion of PRRI against the reign of Sukarno, which was a guided democracy in which the centre of policy was on the president.

d. The Reign of Soeharto (New Order)

The dissolution of the Communist Party of Indonesia (PKI), after the rebellion of 1926/27 PKI, made communism banned over Indonesia. However, it does not mean that PKI completely left. In 1930, the party secretly resumed its political activities. After the independence of Indonesia, activists of PKI were back to their political activities mainly based on the Presidential Decree 3 November 1945 on Establishing Freedom Party.

In the old order, PKI was controversial in the national politics. One of the communist leaders, Amir Syarifudin, became the Prime Minister. After the fall of Amir Syarifudin cabinet which was replaced by the cabinet of Hatta, the policy called Reconstruction and Rationalisation (Re - Ra) in which every element of military forces was cleaned from PKI or communism. This policy led to a rebellion in Madiun. PKI had controlled the important places in Madiun, but it was not for long time. The Siliwangi forces shortly retook Madiun. Many PKI leaders were killed, including Moeso - the leader of the rebellion.

This rebellion did not make PKI dissolved. Only activists of PKI who participated in the rebellion were tried, although at first it made the President Sukarno infuriated. Moreover, PKI still included in the cabinet meetings, which eventually made PKI a strategic actor in the government. Political parties which do not want communism to involve the government suggested the President Sukarno to be tougher against PKI.

⁴ Usmaidi Radi, MA, *Strategi PPP, Studi Tentang Kekuatan Politik Islam Tingkat Nasional*, Intergritas Press, Jakarta, 1989.hlm 33-34.

This situation forced PKI to get closer with the President Sukarno. Additionally, Soekarno argued that PKI was key power besides the Army and PNI. PKI ended after the movement of 30 September 1965 or G30S/PKI, where a number of great generals were kidnapped and murdered in Jakarta. The Revolutionary Council consisting of 45 people was formed to secure the State and the President. This movement is suspected to be masterminded by PKI. The signing of Supersemar marked the end of the Old Order which was later replaced by the New Order. Supersemar brought the entire political power to Suharto, and caused PKI and communism banned over Indonesia.

In the New Order, there was no dissolution of political party, but fusion or simplification of political party applied. This caused by the argument that many political parties threat the national stabilisation. In the concept of fusion, political parties were divided into three groups of religions, labour and democracy. The group of religions was represented by PPP (NU, Perti, Parmusi, and PSII), the labour was represented by the Golkar - in this case Golkar is not a political party but a communal group allowed in the national election, and the democrat is represented by PDI (PNI, IPKI, Murba, Parkindo and Partai Katolik). During the period of national election 1977, 1982, 1987, 1992 and 1997 only the three groups are allowed in the national election.

e. The Reform Era

The Shift of the New Order to the Reform Era, fusion or dissolution of political parties no longer occurs. This era is the departure point of freedom for association. Political parties are not dissolved or simplified by particular forces, but they dissolve on their own or merge themselves with other parties. The merging was usually administrated to meet the electoral threshold in order to follow the general election.

During the Reform, the Constitution has been revised for four times. It began from 1999 to 2002. The revisions significantly changed the constitutional system of Indonesia. One of the vital changes is the revision of judicial power. First, the judicial authority, based on the Article 24 Paragraph 1 and 2, has the constitutional independence of the judiciary to uphold the organization of law and justice without any influence. Second, the constitutional principle of "checks and balances" is implemented in the judicial power. This principle is constitutionally manifested with the formation of Judicial Commission as a watchdog who equally plays along with the Supreme Court (MA) and the Constitutional Court (MK). The Constitutional Court is further regulated in the Act No. 24 of 2003 Jo. the Act No. 8 of 2011 on the Constitutional Court.

The third amendment of the Constitution 1945 adopted the establishment of the Constitutional Court as an institution equally standing beside the Supreme Court. The authority is described in the Article 24 C, Paragraph 1 and 2, of the Constitution 1945. The authority is "deciding dissolution of political parties" that was previously based on the Act No. 2 of 1999 on Political Parties. The supervisory authority for freezing and dissolution of political parties is owned by the Supreme Court. According Pataniari Siahaan, granting the authority to the Constitutional Court on the dissolution of political parties is right because political issues would also concern on the constitutional.⁵

2. The legal consequences of the dissolution of political parties in the democratic system of Indonesia

Political parties become one major characteristic of democracy, even a political party is one of the democracy pillars. Political parties serve to organize the various public aspirations. The regulation of political parties is required along with the political development to realise the suitable system of political party. In the democracy, obstacles in the development of political parties are impossible to do because the freedom for association in a democratic state cannot be limited. Political party is a manifestation of the right to freedom for speech and assembly, but these rights should be restricted by regulations, including regulations on dissolution of political parties.

Sam Issacharoff in his book "fragile Democracies" explains that one form of restrictions that can be justified and necessary in a democratic society is the limitation of the groups threatening democracy, freedom, and society. The state may prohibit or dissolve an organization, including a political party which is contrary to the basic and constitutional order. The democratic state does not only have rights, but also duties to ensure and protect the constitutional principles of democracy.⁶

⁵ Jimly Asshiddiqie, *Kemerdekaan Berserikat Pembubaran Partai Politik dan Makamah Konstitusi*, Konstitusi Press, Jakarta, 2006. Hlm 102.

⁶ <http://beritasore.com/2011/03/18/pembubaran-parpol-paling-demokratis-melalui-pemilu/> di akses pada tanggal 2 februari 2012.

According to Mahfud M. D., political parties should not be harmful to democracy, the existence and unity of the nation. Political parties have to be the democracy pillar. It is a reflection of the freedom in a democratic country. If a political party violates the democracy, it has to be dissolved.⁷

Mahfud adds the dissolution of political party can be administrated if its activities are found being contrary to the constitution - both in ideology, principles, activities, goals, programs, or activities. The dissolution is o the authority of the Constitutional Court. With that authority, the Constitutional Court could keep political parties from the arbitrary, authoritarian, arrogant and undemocratic behaviour. The Court also undermines democracy while keeping the political parties' ideology, principles, activities, goals, programs and activities accordance with the Constitution 1945.⁸

Jimly states that the dissolution of political parties is not a violation against the democracy if it is done to protect the state integrity and constitutional order. However, the dissolution must be based on the regulations set by the Constitution and Acts of Republic of Indonesia.⁹

From the constitutional reality, political party is not only the pillars of democracy, but it also becomes a pillar of the constitution and the state. Harjono, a judge of the Constitutional Court, argues that the institutionalisation of the freedom for association and assembly is guaranteed regulated by the Constitution; at the same time it is an actor in the implementation of the Constitution on the political system. It is associated with elections of the House of Representatives, President and Vice President.¹⁰

Determining the dissolution of a political party is different to the petition for act reviews towards the Constitution, where access to the Constitutional Court seems to be rather broad. Based on the Article 68 of the Constitutional Court Acts, only the government is able to conduct dissolution to political party. The government means the central government. In general, the dissolution of political party in Indonesia has to be done in the Constitutional Court, but in a country which does not have the Constitutional Court the dissolution of political party is processed in the court. The court must apply the principle of "due process of law" and openness, which guarantees the rights of political party.

Repressions against a political party should observe and pay attention to important roles of the political party in the democracy, the political system guarantying freedom for association as a basic human right. This right can only be restricted in the form of dissolution through judicial bodies which are competent to decide the dissolution of political parties. It is to protect the rights of association, to keep the dissolution parallel with the Constitution and to ensure it meet democratic principles¹¹. The dissolution of political party, so far, had no impact on the democratic system of Indonesia. It was done because the political party opposed to the basic and constitutional order. The dissolution basically aimed to protect the democracy, constitution, national sovereignty, security and ideology.

4. CONCLUSION

1. Summary

The dissolution of political parties in Indonesia from the colonial period to the Reform:

- a. During the Dutch colonial period, there were three dissolutions of political parties of independence movement. First, in 1913 the *Indische Partij* (IP) was dissolved by the Dutch colonial government, IP considered as a threat to the public order and stabilisation. Second, the failed uprising of the Communist Party of Indonesia (PKI) in January 1927 caused the party put down by the Dutch. Third, the dissolution of the Indonesian National Party (PNI) was caused by radical actions of Soekarno, the chairman of the national independence movement.

⁷ <http://www.politikindonesia.com/m/index.php?ctn=1&k=politik&i=19390> di akses pada tanggal 20 Desember 2011

⁸ <http://www.partaimerdeka.or.id/component/content/article/60-berita/893-langgar-konstitusi-partai-politik-bisa-dibubarkan.html> di akses pada tanggal 17 Desember 2011

⁹ http://webcache.googleusercontent.com/search?q=cache:JQ9R8_RMnuAJ:www.mahfudmd.com/index.php%3Fpage%3Dweb.MakalahVisit%26id%3D21+pembubaran+partai+politik+menurut+jimly+md&cd=4&hl=id&ct=clnk&gl=id di akses pada tanggal 20 Desember 2011

¹⁰ <http://mardian.wordpress.com/2011/11/10/mungkinkah-membubarkan-partai-politik/> di akses pada tanggal 7 Februari 2012.

¹¹ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (edisi 2), Sinar Grafika, Jakarta, 2011, hlm 36-37

- b. During the Japanese colonial period, there was no dissolution of political parties, but the entire movement involving politics and organization was strictly controlled, even all meetings conducted by the nationalist parties were also prohibited. It affected all parties got down.
- c. During the Old Order, there were two parties dissolved, namely Masjumi and PSI. The two parties were dissolved by the Presidential Decree No. 200 and 201 of 1960. The party was disbanded due to their participation in the PRRI rebellion against the government, which is Sukarno's Guided Democracy.
- d. During the New Order, there was no dissolution of political parties, but some political parties were merged. It is caused by an assumption that many political parties were considered a threat to the state stabilisation. The merged parties are divided into three groups of religion, labour, and democracy.
- e. In the Reform era, there is no fusion or dissolution of political parties. The reform era is a moment of freedom for association. The dissolution of political parties which occurred in this era is not caused by particular forces, but by their own. The dissolution of political parties is administrated through the judicial system of Indonesia, the democratic state.

The dissolution of political parties does not give impacts towards the democratic system of Indonesia. The dissolution was done because the political parties opposed to the basic and constitutional orders. Moreover, the dissolution aims to protect the democracy, constitution, national sovereignty, security and ideology.

2. Suggestion

The government should be more responsive in setting and designing regulation on political parties in order to ensure and protect freedom for association, assembly, and speech, which is guaranteed by the Constitution of 1945. The new setting will be expected not only confirms that the dissolution of political parties to do only limited ideology, principles, objectives, activities and programs as opposed to 1945, but the action in the future would be unlawful political party members are expected to be able to become one of reproach, where political parties can be dissolved.

In the future, it is expected that not only the government who has the privilege to be able to propose the dissolution of political parties, but also the citizens. It would be better if the citizens would also watch and propose dissolution of political party which threatens and harms the state and constitution.

People should be more observant and courageous in considering their rights and obligations guaranteed by the acts. Hopefully, it will encourage and bring positive impact to the democratic government and prosperity of Indonesia.

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