

Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?

Jayus

University of Jember, Indonesia
dr.jayus56.fh@unej.ac.id

Muhammad Bahrul Ulum

University of Jember, Indonesia
muhd.bahrul@unej.ac.id

Moch. Marsa Taufiqurrohman

University of Jember, Indonesia
mochmarsa_t@yahoo.co.id

ABSTRACT

This study aims to discuss the existing contentious recall policy that becomes the legitimate reason to replace or retire the House member proposed by political parties. The discussion also examines to what extent recall, in practice, whether it enables the promotion of Indonesia's anti-corruption agenda. Through the recall, political parties can withdraw their members in the House, either in the form of dismissal or changing positions before the end of the term of office of members who sit in the House of representatives. This study finds that the existing recall policy impedes democracy and negates how to eradicate corruption in Indonesia. As a result, the current policy needs an option to ensure that recall will work as it is expected. Therefore, this alternative should include constituents to propose recall, which will disrupt the existing parties' domination, resulted in a more participatory system, and it reflects the more reciprocal ways to link people, parties, and the House in Indonesian politics. The judiciary's role is another essential aspect to highlight, in which the process and settlement of the recall may involve the Constitutional Court as the hub of the political and constitutional settlement.

KEYWORDS: Indonesian Democracy, Anti-Corruption Agenda, Recall Policy, Political System.



Copyright © 2020 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

HOW TO CITE:

Jayus, Muhammad Bahrul Ulum & Moch. Marsa Taufiqurrohman. "Examining Recall of the House Member: How Does It Impact on Eradicating Corruption in Indonesia?" (2020) 7:1 Lentera Hukum 101-116.

Submitted: November 13, 2019 Revised: April 02, 2020 Accepted: April 04, 2020

I. INTRODUCTION

In the global discourse of democracy in post-colonial states, Indonesia has become one example for which its continuities and changes have attracted scholars to have an in-depth study to what extent it inspires and represents other countries in adopting democracy as the triumph. In practice, Indonesia has crucial challenges in maintaining democracy, mainly when it deals with how democracy enables to develop as an inclusive system, by providing adequate participation in decision-making rather than the existing system that builds up the inclusiveness centered by the political elites.

This study acknowledges that representative democracy will work well as long as the reciprocity has been complied with among people, representatives, and political parties.¹ While people's representatives are expected to represent people's interests,² political parties in Indonesia tend to keep the elite scenario with the absence of the sufficient vertical control in ensuring the work of democracy.³ Therefore, it is undeniable that Indonesia's current representative democracy is inefficient, lacks transparency, and encourages rampant corruptive practices.

In addressing the poor performance and linkage among these three elements, this study discusses the existing contentious recall policy that becomes the legitimate reason to replace or retire the House member proposed by political parties. This discussion also examines to what extent recall in practice promotes the anti-corruption agenda in Indonesia. Through the recall, political parties can withdraw their members in the House, either in the form of dismissal or changing positions before the end of the term of office of members who sit in the representative institution.⁴ Political parties' limited transparency and extensive power make this recall shift the people's loyalty to political parties rather than the people⁵ even though recall initially is intended to monitor the House members' monitoring mechanism in carrying out their tasks.⁶

¹ Dimitri Landa & Ryan Pevnick, "Representative Democracy as Defensible Epistocracy" (2020) 114:1 *American Political Science Review* 1–13 at 5.

² Jared Sonnicksen, "Dementia and representative democracy: Exploring challenges and implications for democratic citizenship" (2016) 15:3 *Dementia* 330–342 at 334.

³ The vertical control mechanism asserts the people's control against the representative formed as the consequence of constitutional democracy as outlined in Article 1 paragraph (2) and (3) of the Indonesian Constitution.

⁴ Muhamad Aljebra Aliksan Rauf, Marten Bunga & Hardianto Djanggih, "Hak Recall Partai Politik Terhadap Status Keanggotaan Dewan Perwakilan Rakyat dalam Sistem Ketatanegaraan Indonesia" (2018) 7:4 *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 443–455 at 443.

⁵ In practice, recall becomes the political parties' power, as outlined in Article 239 of the revised Parliament Act 2014. The absence of the recall's parameter, therefore, this mechanism is often instrumented as the political tool to ensure member's loyalty to parties.

⁶ Shevierra Danmadiyah, Xavier Nugraha & Sayyidatul Insiyah, "A Party's Recall Right in the Concept of Democratic Country" (2019) 19:2 *Syariah: Jurnal Hukum dan Pemikiran* 151–158 at 152.

Previous studies regarding this topic examined the democratic aspects of recall,⁷ the relationship between recall and democracy,⁸ decision-making of recall,⁹ and the legal consequences of recall monopolized by parties.¹⁰ Instead, there is a lack of research examining the intersections between recall and the anti-corruption agenda, assumed as the political conundrum to maintain the superiority of the political elite in Indonesian democracy, as this examination will be elaborated in this study.

This study comprises three parts of the discussion. The first part will provide an overview of the relationship between political parties, representative democracy, and recall in Indonesia, as the continuum analysis under the current Indonesian political system. This part will also examine how corruption is handled in Indonesia about the recall. The second part will explore the relationship between recall policy and the paradox to eradicate corruption in Indonesia. In the last part, this study will discuss how to build a participatory recall to promote eradicating corruption in Indonesia.

II. POLITICAL SYSTEM AND RECALL IN INDONESIA

A. Representative Democracy in the Indonesian Political System

The 1998 reformation has started a new chapter for Indonesia's recent political and economic trajectories in the more liberalized and globalized system. Amongst the global shift that encourages the more transparent polity, Indonesia has made a considerable improvement by reforming the existing constitutional system from 1999 to 2002. When the final draft of the constitutional revision was agreed, it had become the cornerstone of Indonesia's constitutional system for which many precede scholars in the times assumed Indonesia had the better and impactful system for sustainable democracy. This reform also reflected the previous government's poor governance considered to proliferate the root of rampant corruptive practices.¹¹ In this period, the reform committed to rejuvenating democracy and the rule of law, including the commitment to handling corruption cases.¹²

As a result of the reform, the system shifted from parliamentary to a constitutional democracy. The current system rejects the monopolized people's representation by the People's Consultative Assembly or *Majelis Permusyawaratan Rakyat* (MPR).¹³ Hence,

⁷ Danmadiyah, Nugraha & Insiyah, *supra* note 6.

⁸ Maulana Akmal Zikri & M Zuhri, "Tinjauan Yuridis Tentang Hak Recall Oleh Partai Politik Berdasarkan Konsep Kedaulatan Rakyat Dalam Lembaga Perwakilan Di Indonesia" (2018) 2:2 Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan 358–368.

⁹ Iswatul Hasanah, "Recall Partisipatif (Paradigma Asas Musyawarah Mufakat dalam Mekanisme Pemberhentian Anggota Dewan Perwakilan Rakyat Republik Indonesia)" (2014) 1:1 Kumpulan Jurnal Mahasiswa Fakultas Hukum.

¹⁰ Hadi Shubhan, "Recall: Antara Hak Partai Politik dan Hak Berpolitik Anggota Parpol" (2006) 3:4 Jurnal Konstitusi 3057.

¹¹ Harold A Crouch, *Political Reform in Indonesia After Soeharto* (Institute of Southeast Asian Studies, 2010) at 114.

¹² *Ibid* at 118.

¹³ Article 1 (2) of the 1945 Constitution (original) stated, "Sovereignty rests in the hands of the people and is fully implemented by the People's Consultative Assembly."

political supremacy should be under the constitution rather than under this institution. It also considers that although the MPR is idealized as an institution representing people's interests, it shifted to express political and elite interests in reality.¹⁴ Therefore, constitutional democracy is an effective way to ensure democracy consistent with the ideal and commonly agreed term: "*the government of the people, by the people, for the people*" that must follow the constitution.¹⁵

Indeed, by referring to Pancasila, Indonesia's basic philosophy, Indonesian democracy's design refers to representative democracy.¹⁶ This system is often justified different from the so-called direct democracy for which the people are directly involved in the political process without representation.¹⁷ In a representative democracy, the vital aspect is how to build relationships between people and representatives in the House.¹⁸ Consequently, House members should act as desired by the people by virtue of accountability. While on the other hand, they also can be more independent of various people's interests.¹⁹ To be sure, participation in modern democracy remains vital. Representative democracy has developed into participatory democracy interpreted as government power that comes from the people, for the people, by the people, and together with the people.²⁰

Participatory democracy is defined as a mechanism that allows individual participation by citizens in political and policy decisions that affect their lives, and especially it is conducted directly rather than through elected representatives.²¹ In dealing with the discussion mentioned above on democracy, political parties are required in a representative democracy. In the words of Giovanni Sartori, a political party is a political group that participates in general elections, which are used as a means of placing candidates to occupy public positions. Whereas in principle, political parties aim to gain political power by constitutional means in implementing their programs.²²

In a democratic country like Indonesia, political parties have important functions. Political parties are a means of political communication, political socialization, political recruitment, and conflict management. First, as political communication, it can be interpreted that political parties function in disseminating government plans and policies and as a link between those who govern and those who are governed. This

¹⁴ Ramlan Surbakti et al, *Membangun Sistem Kepartaian Pluralisme Moderat: Menyederhanakan Jumlah Partai Politik* (Kemitraan bagi Pembaruan Tata Pemerintahan, 2011) at 19.

¹⁵ Yasmin Dawood, "The Fragility of Constitutional Democracy" (2017) 77 Md L Rev 192 at 196.

¹⁶ Syafriadi Syafriadi, "Pelaksanaan Demokrasi dalam Sistem Ketatanegaraan Indonesia" (2017) 1:1 UIR Law Review 25–38 at 26.

¹⁷ Fathan Ali Mubiina, "Pola Hubungan Fraksi dengan Lembaga Dewan Perwakilan Rakyat Republik Indonesia Pasca-Reformasi" (2020) 8:1 Diktum: Jurnal Ilmu Hukum 36–69 at 41.

¹⁸ Landa & Pevnick, *supra* note 1 at 6.

¹⁹ Mubiina, *supra* note 17 at 44.

²⁰ *Ibid.*

²¹ Participatory democracy has become a model for the collective decision-making that integrates direct and indirect democracy elements. The people have the power to decide the proposal policy while their representatives have a role in implementing it. Henry Campbell Black et al, *Black's law dictionary* (West Group St. Paul, MN, 1999) at 246.

²² Miriam Budiardjo, *Dasar-dasar Ilmu Politik* (Gramedia Pustaka Utama, 2003) at 404–405.

function is essential as the bridge in responding to people's interests.²³ Second, as political socialization, it is related to conveying political culture, norms, and values over generations.²⁴ This function relates to efforts to create an image to obtain the public interest. Besides, it is also in the context of providing education for its members to have awareness and responsibility as citizens and place their personal interests under the national interest.²⁵ Fourth, as political recruitment, it is closely related to leadership selection, both internal leadership in parties and national leadership.²⁶ Fifth, as managing conflict related to helping problems of differences in each society that has potential conflicts.²⁷

Persily and Cain argue that several main principles must be considered in regulating political parties.²⁸ First, electoral system symbiosis, in which the constitutionality of rules regarding political parties depends on other related legal rules regarding the method of nomination and restrictions on electoral competitiveness.²⁹ Second, party autonomy in which the rule determines membership of parties, organizations, or nomination procedures must be seen as disturbing freedom of association.³⁰ Third, anti-paternalism in which every national interest that can be achieved through party regulation for its benefit cannot be used as a justification for state rules regarding political parties.³¹ Fourth, equal treatment in which the law gives disproportionate privileges and burdens on certain parties means violating the same protection provisions.³² Fifth, electoral influence in which political parties that show their ability to influence election results have the right to become the party to be elected.³³

B. Does Recall Hinder the Anti-Corruption Agenda?

Recall literally means official withdrawal. Generally, recall is also known as recall election, recall referendum, or representative recall. A recall is used as a procedure to "lower" an elected official through direct elections before the official's tenure has ended.³⁴ As for Mahfud MD defines, recall is the right to replace members of a consultative organization or representative from their position so that they no longer have

²³ *Ibid* at 406.

²⁴ *Ibid* at 407.

²⁵ *Ibid* at 408.

²⁶ *Ibid*.

²⁷ *Ibid*.

²⁸ Anika Gauja, *Political Parties, and Elections: Legislating for Representative Democracy* (Routledge, 2016) at 19–23.

²⁹ *Ibid* at 20.

³⁰ *Ibid* at 21.

³¹ *Ibid* at 22.

³² *Ibid*.

³³ *Ibid* at 23.

³⁴ Ananda B Kusuma, *Sistem pemerintahan" pendiri negara" versus sistem presidensial" orde reformasi"* (Badan Penerbit Fakultas Hukum, Universitas Indonesia, 2011) at 102.

membership status in that institution.³⁵ Tomassen defines the right to recall a political party's right to withdraw parliament members who are elected through a list of candidates it proposes.³⁶

In some countries, recall is carried out on people's representatives, including legislative members and regional heads such as mayors and governors. Colombia is an example, including a recall referendum in the 1991 Constitution to address the movement known as "*la septima papeleta*."³⁷ Latvia is another country that introduces recall.³⁸ If one-tenth of the voters starting a referendum in Latvia wish to withdraw *Saeima* (parliament), then recall can be implemented.³⁹ In the Philippines, the people can withdraw local officials through recall. The mechanism starts with a minimum of 25% of voters in an area signing the petition.⁴⁰

Although there is no direct equivalent in Indonesia, the "withdrawal" mechanism is interpreted as the dismissal of a parliament member through *Penggantian Antar Waktu* (PAW), defined as recall, based on Article 22B the 1945 Constitution. This article states, "Members of the House of Representatives can be dismissed from his position, in which the terms and conditions of which are regulated by law. " This mechanism is further detailed in Article 239 of the Parliament Act,⁴¹ and Political Parties Act.

In the context, recall aims to supervise members of political parties who are members of the House, which is expected to improve the House members' performance, accountability, and integrity.⁴² Its enforcement is carried out as a form of anticipation and supervision of the House members for disgraceful acts in political struggles over implementing their duties and functions. However, Denny Indrayana, an Indonesian law professor, argues that the application of recall monopolized by political parties is contrary to rights and the right to expression. Through the recall monopolized by parties, party members do not represent the people but represent the political parties. It confirms that there is a denial of the meaning of the House as an extension of people's representatives and not political party representatives.⁴³

³⁵ Mohammad Mahfud MD, "Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia" (1993) Disertasi, Pasca Sarjana Ilmu Hukum Universitas Gajah Mada, Yogyakarta at 324.

³⁶ Shubhan, *supra* note 10 at 46.

³⁷ *La septima papeleta* is defined as a call from the Colombian people for constitutional reform to end violence, narcotics-related terrorism, corruption, and increasing citizen indifference. Yanina Welp & Juan Pablo Milanese, "Playing by the rules of the game: partisan use of recall referendums in Colombia" (2018) 25:8 Democratization 1379–1396 at 1389.

³⁸ Andrzej Jackiewicz, "Instytucja Recall na \Lotwie" (2018) 2 (42) Przegląd Prawa Konstytucyjnego 69–82 at 71.

³⁹ *Ibid.*

⁴⁰ Julio Teehankee, "Electoral Politics in the Philippines" (2002) Electoral Politics in Southeast and East Asia 149–202 at 152.

⁴¹ Recall can be accomplished when the House members: (a) die; (b) resign as a member at own request in writing; and (c) proposed by the political party concerned to resign.

⁴² Shubhan, *supra* note 10 at 34.

⁴³ *Ibid* at 35.

Historically, the first recall policy was introduced in 1969, in Act Number 16 of 1969 on the Parliament Act. Article 13 of this Act became the legitimate basis for dismissing the parliament members from their tenure. Meanwhile, the right to recall is attached to the organizations participating in the election as Article 43 paragraph (1) of this Act that states the right to change delegates or organizations participating in the elections in a consultative body or people's representatives lies with the election organization concerned and in terms of its implementation, it must first deliberate, with the leadership of the consultative body or people's representatives.

In its continuities, demands for repealing recall have emerged. This emergence considers the possible decline in the people's critical representatives to have even resulted in the House members' fear of voicing people's aspirations.⁴⁴ In the end, based on Act Number 2 of 1999 on Political Parties and Act Number 4 of 1999 on the Parliament Act, a recall was successfully eliminated, except for reasons that could not be avoided, such as passing away, resigning, or being sentenced with a criminal penalty. However, after House members cannot be dismissed, it has adverse implications for the House institution. House members who behave in a disgraceful manner are involved in corruption cases, immoral acts, and drug abuse.⁴⁵ Then, as an effort to overcome this situation, in Act Number 22 of 2002 on Parliament and Act Number 2 of 2011 on Political Parties, the recall had revived in which the practice submitted to the respective political parties' leadership.⁴⁶ Then, recall set out in the subsequent Parliament Act, whose practice remains under respective political parties. Of course, this is very unfortunate due to exempt people or citizens to participate in proposing recall. To be sure, citizens are substantially eligible to be part of this procedure because their representatives are part of the reciprocity in a participatory democracy.

It is inevitable that recall in practice results in a more adverse political system. recall opens new political voids in which there will be more spaces for political parties to impose recall for their members under controversial reasons.⁴⁷ For example, the recall for Lily Wahid by *Partai Kebangkitan Bangsa* (PKB) was deemed to have violated the party's provisions. While on the other hand, it was the party that supported the Century Bank case's investigation through the House's inquiry right.⁴⁸ Lily Wahid's attitude was an attempt to thoroughly convey the people's will to investigate the Century Bank case through these House functions. However, in other cases, recall raises the practice of collusion, such as in the case of Harun Masiku in early 2020.⁴⁹

⁴⁴ Moh Mahfud, *Perdebatan Hukum Tata Negara: Pasca Amandemen Konstitusi* (LP3ES, 2007) at 167.

⁴⁵ *Ibid* at 168.

⁴⁶ *Ibid* at 169.

⁴⁷ Rauf, Bunga & Djanggih, *supra* note 4 at 16.

⁴⁸ Republika, "DPP PKB Recall Lily Wahid dan Effendy Choirie | Republika Online," online: <<https://republika.co.id/berita/breaking-news/nasional/11/03/14/169326-dpp-pkb-recall-lily-wahid-dan-effendy-choirie>>.

⁴⁹ "Kasus Harun Masiku, Kader PDIP Didakwa Suap Rp600 Juta", online: <<https://www.cnnindonesia.com/nasional/20200402135522-12-489583/kasus-harun-masiku-kader-pdip-didakwa-suap-rp600-juta>>.

Recall, in several ways, is believed to influence the eradication of corruption.⁵⁰ Corruption can be defined as behavior that deviates from formal ethical rules regarding a person's actions in a position of public authority due to motives for personal considerations, such as wealth, power, and status. According to Yves Meny, corruption consists of shortcut corruption, tribute corruption, contract corruption, and extortion corruption.⁵¹

First, bypass corruption is often practiced in embezzlement cases of state funds, economic and political intermediaries, where the economic sector pays for political gain. Second, tribute corruption due to strategic positions, and thanks to these positions, a person gets a percentage of several activities in several fields. Third, contract corruption, inseparable from efforts to obtain projects or markets. It includes in the category of efforts to get facilities from the government. *Fourth*, extortion corruption, related to security guarantees and matters of internal and external turmoil.⁵² Amien Rais divides the four types of corruption in Indonesia. *First*, extortionate corruption, referring to a situation where a person is forced to 'bribe' to get something or protect his rights and needs. *Second*, manipulative corruption is a type of bribery that refers to a person's dirty efforts to influence policymakers or government decisions to obtain the maximum benefit. *Third*, nepotistic corruption, a type of bribery, refers to the preferential treatment given to family or someone close to them. *Fourth*, subsection corruption, in the form of theft of state assets by state officials through abuse of their power.⁵³

If the types and types of corruption above are related to Indonesia's phenomena, especially in representative institutions, then the critical thing that must be paid attention to is efforts to minimize political corruption. Scheppele said that political corruption occurs when what is harmed is the wider community's interests, while personal politics occurs through acts of personal relaxation and only individuals suffer losses. Meanwhile, Sartori states that political corruption has reached the point of destroying politics.⁵⁴

Eradicating corruption after the constitutional reform is a point of dealing with increasingly widespread corruption by defining it as extraordinary crime.⁵⁵ The status of corruption as an extraordinary crime means that corruption has entered into all areas of life. To respond to this behavior, the government should thoroughly carry out a series of improvements to the corruption eradication system. System combating corruption within the legal framework is closely related to improving the legal system to combat corruption, including three essential elements: structure, substance, and legal culture. The structure is defined as the entire existing legal institutions and their enforcing

⁵⁰ Rauf, Bunga & Djanggih, *supra* note 4 at 16.

⁵¹ HM Arsyad Sanusi, "Relasi Antara Korupsi dan Kekuasaan" (2009) *Jurnal Konstitusi* 83–104 at 84–85.

⁵² *Ibid* at 86.

⁵³ *Ibid*.

⁵⁴ Denny Indrayana, *Negeri Para Mafioso: Hukum di Sarang Koruptor* (Penerbit Buku Kompas, 2008) at 146–147.

⁵⁵ I GM Nurdjana, *Sistem Hukum Pidana dan Bahaya Laten Korupsi: Perspektif Tegaknya Keadilan Melawan Mafia Hukum* (Pustaka Pelajar, 2010) at 134.

officers. The substance is defined as the fundamental rules, norms, and legal principles, both written and unwritten, and legal culture in the form of opinions, habits of thinking, and acting of law enforcers and community members related to the law.⁵⁶

Even though corruption is classified as an extraordinary crime,⁵⁷ the actual attitude is still far from the expectation that it is limited to treating it as an ordinary crime.⁵⁸ Meanwhile, the handling of corruption in state institutions internally has not been carried out correctly.⁵⁹ Supposedly, responsive corruption eradication should rely on formally eradicating corruption, which is the Attorney General's Office's duty and authority and the Commission of the Eradication of Corruption or *Komisi Pemberantasan Korupsi* (KPK). However, it also deals with every party's obligation, including each state institution, carried out internally, especially in preventing corruption.

III. RECALL AND ITS PARADOX FOR THE ANTI-CORRUPTION AGENDA

The shift in the meaning of corruption as an extraordinary crime means that corruption is a serious crime, requiring all parties' involvement in eradicating, both internally and externally, in state institutions. One of the parties that have played a significant role in eradicating corruption, apart from the Public Attorney and the KPK, is the House. The House is an institution with strong legitimacy and acts in the name of the people's interests.⁶⁰ Even though in reality, the House's role and functions are still not fully confirm with democracy due to the more rampant rate of corruption comes within the House.⁶¹ As a result, the House, which should represent the people's interests, arguably stands under the parties' interests, even if this institution is primarily dedicated to representing people's interests.⁶² Article 1 paragraph (2) of the 1945 Constitution outlines that sovereignty is in the people's hands. It is exercised according to the constitution, which implies that the people as the party have the highest power in

⁵⁶ Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975) at 15–17.

⁵⁷ In the Indonesia legal system, 'extraordinary crime' is extracted from the term most serious crimes in the Rome Statute. This term then develops more widely and is introduced to the cases of terrorism, corruption, drug abuse offenses, and sexual abuse of children in the laws and regulations. The Constitutional Court has used this term through its decision Number: 2/PUU-V/2007 and Number 3/PUU-V/2007. Vidya Prahassacitta, "The Concept of Extraordinary Crime in Indonesia Legal System: is The Concept An Effective Criminal Policy?" (2016) 7:4 *Humaniora* 513–521 at 513.

⁵⁸ 'Ordinary crime' is the general term as outlined in the Indonesian Criminal Code. The difference between ordinary and extraordinary crimes is the consequences of the preparation and formulation of legislation as part of the correctional policy. Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Federation Press, 2016) at 74.

⁵⁹ Septiana Dwiputrianti, "Memahami Strategi Pemberantasan Korupsi di Indonesia" (2009) 6:3 *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu dan Praktek Administrasi* 01 at 13.

⁶⁰ Andi Gau Kadir, "Transparansi Legislatif dalam Lembaga Perwakilan Rakyat" (2008) 1:1 *Jurnal Administrasi dan Kebijakan Kesehatan Indonesia* 35–40 at 39.

⁶¹ Indrayana, *supra* note 54 at 114.

⁶² Sebastian Salang, "Parlemen: Antara Kepentingan Politik vs Aspirasi Rakyat" (2006) 3:4 *Jurnal Konstitusi* 90–120 at 96.

Indonesian politics whose implementation must be based on the constitution (constitutional democracy).⁶³

Indeed, the representative institution is prominent in modern democracy. The political process cannot be carried out directly by the people considering the number of territorial coverage and technical problems in government implementation.⁶⁴ However, in any democratic country, efforts are always required to build a representative system that allows representatives to properly carry out their representative duties and functions.⁶⁵ So, a representative institution that can carry out its representative function properly is an effective way of channeling its people's aspirations in a democratic country. On the other hand, democracy needs a space to convey criticism and suggestions for all societal elements, to realize effective public communication.⁶⁶ Based on this effective communication, the expressed public aspirations become parameters and considerations of public policy, which is hereinafter known as the conception of deliberative democracy.

When related to this reality, the House's functions are still not directly proportional to the meaning and essence of democracy, as mentioned above. The nature of democracy is interpreted substantively that the people hold trusted sovereignty through their responsibility to oversee the government's running.⁶⁷ A further legal arrangement is needed for the people to act on violations committed by the House members. On the other hand, the above statement relates to the House's oversight function for government checks and balances. However, the problem is, if the House has a supervisory position, then what about the supervision for the House? Meanwhile, the 1945 Constitution and other laws and regulations do not yet regulate provisions regarding House members' oversight mechanisms. Excessive power is the basis for corruption. This, as Lord Acton said, "power tends to corrupt, but absolute power is corrupt absolutely."⁶⁸

In the rule of law, a legal mechanism is vital to protect citizens and hold the House members accountable in carrying out their duties, powers, and functions.⁶⁹ C.F. Strong argues that if citizens have the right to elect their representatives, they should also have the right to dismiss their representatives.⁷⁰ Meanwhile, as an implication of the rule of law, of course, recall needs to be regulated through laws relating to citizens' rights to supervise, maintain and uphold the honor, dignity, and behavior of their representatives. Besides, it is necessary to have provisions regulating citizens' rights to bring their

⁶³ Khairul Fahmi, "Prinsip Kedaulatan Rakyat dalam Penentuan Sistem Pemilihan Umum Anggota Legislatif" (2016) 7:3 Jurnal Konstitusi 119–160 at 123.

⁶⁴ Dede Sri Kartini, "Demokrasi dan Pengawas Pemilu" (2017) 2:2 Journal of Governance at 3.

⁶⁵ Abdul Bari Azed, "Sistem Pemilu di Indonesia" (2017) 17:2 Jurnal Hukum & Pembangunan 170–180 at 175.

⁶⁶ Kacung Marijan, *Sistem Politik Indonesia: Konsolidasi Demokrasi Pasca-Orde Baru* (Kencana, 2019) at 75.

⁶⁷ Salang, "Parlemen", *supra* note 62 at 97.

⁶⁸ Miriam Budiarjo, "Hak Asasi Manusia dalam Dimensi Global" (1990) 10 Jurnal Ilmu Politik at 172.

⁶⁹ Paimin Napitupulu, *Peran dan Pertanggungjawaban DPR* (Alumni, 2005) at 144.

⁷⁰ Charles Frederick Strong, *Modern Political Constitutions: An Introduction to the Comparative Study of Their History and Existing form* (London GP Putnam's sons, 1930) at 174.

representatives to court if there is an alleged violation of the law in the form of treason against the state, corruption, and other serious crimes. It means that citizens have the right to propose a recall of their representatives through laws.

IV. PARTICIPATIVE RECALL: A PROPOSAL

A. Constituent Recall

The current recall in Indonesia is relatively simple. It is enough that the central leadership council of the political parties submits a proposal to the House. Then, the House forwards the recommendation to the President to issue a presidential decree. The President and the House, in this case, can be likened to just a letterbox and ratification. This is because neither the House nor the President can reject the proposal. Consequently, decision-making by the House and the President is only administrative. This substantial authority of the political party raises the question, is it true that the political party can revoke the House member's mandate who has been given thousands of constituents. Moreover, it violates the Articles of Association or Bylaws or *Anggaran Dasar/Anggaran Rumah Tangga* (AD/ART), which are often unclear.

Although many parties have questioned this, the Constitutional Court in Decision Number 008/PUU-IV/2006 stated that recall did not violate the constitution. According to the Constitutional Court, one of the efforts to empower political parties is to provide the right or authority to impose actions in enforcing discipline against their members, so that members behave and act in ways that do not deviate. Moreover, it contradicts the AD/ART. The Constitutional Court is worried that if the political party is not given the authority to impose sanctions on its members who deviate from the AD/ART or the party's policies, the party members will be free to act arbitrarily.⁷¹

In this context, this mechanism should not be the monopoly of the political parties. Rather, the constituents should have the same. Recall by political parties tends to strengthen the political parties dominant over their party members so that members of the parliament are more concerned with their parties' interests rather than conveying the people's aspirations. The council member concerned will be afraid of recall, which may be imposed on him at any time. Thus, according to Laica, former Constitutional Judge, the parliament became unstable and unstable, controlled by an elite of political parties from outside.⁷² The House member may not be removed from office by being withdrawn by his political party's leader to have different opinions with his political party's leadership. So, it is a denial of the legal relationship between the House members and constituents and state institutions, which should obey the constitution.

In discussing recall, the most appropriate form is a constituent recall. In this form, the proposal for recall can come from members of the House members' electoral area

⁷¹ Indonesian Constitutional Court, Decision Number 008/PUU-IV/2006.

⁷² Danmadiyah, Nugraha & Insiyah, *supra* note 6 at 153.

concerned.⁷³ Thus, every people's representative can genuinely serve the interests of the people he represents, including that his position can also be protected from the possibility of being threatened by his political party's leadership because of the idealism championed for the people. The existing alternation mechanism between times can even be said to deviate from the fourth principle of Pancasila, which requires three crucial elements: people's sovereignty, deliberation, and its implementation is carried out wisely in the concept of representative democracy.⁷⁴ The foundation of the people's right to participate in each political phase of their representatives is based on the right to develop society, nation, and the state as provided by Article 28C paragraph (2) of the 1945 Constitution, everyone has the right to advance himself in fighting for his rights collectively to build society, nation, and country.

Jimly Asshidiqie, the Indonesian leading legal scholar, also believes that recall should be reviewed so that replacing the existing system with the party recall adopted by the constituent recall will be an alternative for policymakers.⁷⁵ Once it has been accomplished, people's representatives do not become the butt of internal political turmoil in parties that tend to be arbitrary following the wishes of those who hold power and have the most influence. It aims to prevent disparity in positions because of the imbalance of power between the representatives and constituents who elect them. An active decision is needed to place a recall on citizens to form a more reciprocal interaction. It is as emphasized by Held that in the relationship of representative democracy, there must be an equalization "playing field" between the representatives of the people and the political constituents.⁷⁶ He also continued that elections should require elements of "freedom" and "equality," both of which are in line with the concept of constituent recall.⁷⁷

Constituent recall links to the five criteria of democratic governance, as coined by Dahl. *First*, in terms of effective participation, all society members must have an effective opportunity to give their opinions and views before a policy is implemented.⁷⁸ mechanism constituent recall can make this happen because community participation is shorter and more direct. In other words, the people's representatives' accountability can be more easily scrutinized and demanded by the public if it is not mediated by a political party that has its agenda and interests in political play. *Second*, in terms of equality of votes, every community member has the same opportunity to vote, and each vote must be considered equally.⁷⁹ If the people think that the vote they have cast for a people's representative is not appropriate, then the constituent recall mechanism can be a voice

⁷³ Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis* (Sekretariat Jenderal dan Kepaniteraan, Mahkamah Konsititusi, 2008) at 64–67.

⁷⁴ Hasanah, *supra* note 9 at 11.

⁷⁵ Jimly Asshiddiqie, *Menegakkan Etika Penyelenggara Pemilu* (PT RajaGrafindo Persada, 2013) at 67–69.

⁷⁶ Allison L Held, Sheryl L Herndon & Danielle M Stager, "The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States" (1997) 3 *Wm & Mary J Women & L* 113 at 19.

⁷⁷ *Ibid.*

⁷⁸ Robert A Dahl, *On Democracy* (Yale University Press, 2008) at 375.

⁷⁹ *Ibid.*

for the people in another form. Third, in terms of a clear understanding of relevant alternative policies,⁸⁰ the constituent recall will encourage people to be more active in studying relevant alternative policies. The level of accountability can be higher because constituent recall applications can also encourage people's representatives to improve their performance in formulating policies. Fourth, in terms of monitoring the agenda,⁸¹ Constituent recall can be a model for monitoring by the people so that state policies remain open and under the people's control, not merely a product of political party games.

B. Participatory Recall Through Judiciary

The basic understanding is that if citizens have the right to elect their representatives, they should have the right to propose recall. This dismissal is not only left to political parties but also citizens. Likewise, if the grant of voting rights for citizens over their representatives is regulated per the law, then their dismissal mechanism must also be regulated through a legal instrument, at the court. At the same time, it is a criticism of the House members' current *recall*, which should also be settled through the court. In the rule of law, all problems must be resolved according to and through the law.⁸²

On the other hand, the relationship between recall and efforts to eradicate corruption is related to alleged violations by citizens, so the people have the legal position to propose the House members' dismissal.⁸³ Simultaneously, it can prevent the application of a recall carried out for reasons of political parties' interests. Therefore the arrangement recall in dismissing the House members must go through the judiciary.⁸⁴ This mechanism will run effectively if the public can actively and critically carry out the House's duties and authorities to eradicate corruption that can be carried out through the Constitutional Court and the General Court (KPK-Tipikor Court). It will have implications for improving the functions of legislation, supervision, and budgeting, namely that the House and the President's legislative products will have better quality and can seriously supervise and prepare the budget and prevent abuse of power.

The settlement of recall needs to be attached to the Constitutional Court's power, as an institution claimed to guard democracy and the constitution. The resolution of alleged violations by the President and/or the House's vice president is the Constitutional Court's competence. The House is another institution that has the same position as the President under the separation of power. It is arguable for the future debate that the House members can be proposed to be dismissed by citizens of the Constitutional Court on suspicion of violating the law, to maintain the dignity and behavior of the House members. It takes into account that the Constitutional Court is the independent institution that accords to the rule of law so that it will be eligible for

⁸⁰ *Ibid* at 376.

⁸¹ *Ibid* at 377.

⁸² Danmadiyah, Nugraha & Insiyah, *supra* note 6 at 153.

⁸³ Rauf, Bunga & Djanggih, *supra* note 4 at 445.

⁸⁴ *Ibid*.

having more powers in response to the problems in formulating the appropriate alternative for recall.

The provision on the President and/or Vice President's dismissal is critical to evaluate, particularly regarding the process recall for the House members to continue to respect court decisions to implement the rule of law. Thus, the executorial power of the Constitutional Court decision in proposing the dismissal of the House members must be binding since it is pronounced at a plenary session open to the public. Thus, several legal arrangements must be addressed as a form of legal harmonization, so that the regulation on recall does not have a conflict of norms in statutory regulations. Harmonization of the law will provide legal certainty about the recall. This legal harmonization is related to replacing the House members between time in the Parliament Act. Regarding the change between times, as regulated in this provision, it is necessary to be improved and several articles to be harmonized so that the implementation of the application arrangement recall to the Constitutional Court will run effectively in implementing the regulation.

V. CONCLUSION

As introduced in the Parliament Act, the existing contentious recall policy has become a crucial challenge to promote Indonesian democracy and the anti-corruption agenda. There have been several cases that assert the current policy is problematic, so that recall needs an option to ensure that recall will work as expected. The option should include constituents to propose recall, which will disrupt the existing parties' domination, resulted in a more participatory system, and it reflects the more reciprocal ways to link people, parties, and the House in Indonesian politics. The judiciary's role is another crucial aspect to highlight, in which the process and settlement of the recall may involve the Constitutional Court as the hub of the political and constitutional settlement.

ACKNOWLEDGMENTS

None.

COMPETING INTERESTS

The authors declare that they have no competing interests.

REFERENCES

- Asshiddiqie, Jimly. *Menegakkan Etika Penyelenggara Pemilu* (PT RajaGrafindo Persada, 2013).
 ————. *Menuju Negara Hukum yang Demokratis* (Sekretariat Jenderal dan Kepaniteraan, Mahkamah Konsititusi, 2008).
 Black, Henry Campbell et al. *Black's law dictionary* (West Group St. Paul, MN, 1999).
 Blagg, Harry. *Crime, Aboriginality, and the Decolonisation of Justice* (Federation Press, 2016).
 Budiardjo, Miriam. *Dasar-dasar Ilmu Politik* (Gramedia pustaka utama, 2003).

- Crouch, Harold A. *Political Reform in Indonesia After Soeharto* (Institute of Southeast Asian Studies, 2010).
- Dahl, Robert A. *On Democracy* (Yale University Press, 2008).
- Friedman, Lawrence M. *The Legal System: A Social Science Perspective* (Russell Sage Foundation, 1975).
- Gauja, Anika. *Political Parties and Elections: Legislating for Representative Democracy* (Routledge, 2016).
- Indrayana, Denny. *Negeri Para Mafioso: Hukum di Sarang Koruptor* (Penerbit Buku Kompas, 2008).
- Kusuma, Ananda B. *Sistem Pemerintahan Pendiri Negara versus Sistem presidensial Orde Reformasi* (Badan Penerbit Fakultas Hukum, Universitas Indonesia, 2011).
- Mahfud, Moh. *Perdebatan Hukum Tata Negara: Pasca Amandemen Konstitusi* (LP3ES, 2007).
- Marijan, Kacung. *Sistem Politik Indonesia: Konsolidasi Demokrasi Pasca-Orde Baru* (Kencana, 2019).
- Napitupulu, Paimin. *Peran dan Pertanggungjawaban DPR* (Alumni, 2005).
- Nurdjana, I GM. *Sistem Hukum Pidana dan Bahaya Laten Korupsi: Perspektif Tegaknya Keadilan Melawan Mafia Hukum* (Pustaka Pelajar, 2010).
- Strong, Charles Frederick. *Modern Political Constitutions: An Introduction to the Comparative Study of Their History and Existing Form* (London GP Putnam's sons, 1930).
- Surbakti, Ramlan et al. *Membangun Sistem Kepartaian Pluralisme Moderat: Menyederhanakan Jumlah Partai Politik* (Kemitraan bagi Pembaruan Tata Pemerintahan, 2011).
- Azed, Abdul Bari. "Sistem Pemilu di Indonesia" (2017) 17:2 *Jurnal Hukum & Pembangunan* 170–180.
- Budiarjo, Miriam. "Hak Asasi Manusia Dalam Dimensi Global" (1990) 10 *Jurnal Ilmu Politik*.
- Danmadiyah, Shevierra, Xavier Nugraha & Sayyidatul Insiyah. "A Party's Recall Right in the Concept of Democratic Country" (2019) 19:2 *Syariah: Jurnal Hukum dan Pemikiran* 151–158.
- Dawood, Yasmin. "The Fragility of Constitutional Democracy" (2017) 77 *Md L Rev* 192.
- Dwiputrianti, Septiana. "Memahami Strategi Pemberantasan Korupsi di Indonesia" (2009) 6:3 *Jurnal Ilmu Administrasi: Media Pengembangan Ilmu dan Praktek Administrasi* 01.
- Fahmi, Khairul. "Prinsip Kedaulatan Rakyat dalam Penentuan Sistem Pemilihan Umum Anggota Legislatif" (2016) 7:3 *Jurnal Konstitusi* 119–160.
- Hasanah, Iswatul. "Recall Partisipatif (Paradigma Asas Musyawarah Mufakat dalam Mekanisme Pemberhentian Anggota Dewan Perwakilan Rakyat Republik Indonesia)" (2014) 1:1 *Kumpulan Jurnal Mahasiswa Fakultas Hukum*.
- Held, Allison L, Sheryl L Herndon & Danielle M Stager. "The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States" (1997) 3 *Wm & Mary J Women & L* 113.

- Jackiewicz, Andrzej. "Instytucja Recall na \Lotwie" (2018) 2 (42) *Przeegląd Prawa Konstytucyjnego* 69–82.
- Kadir, Andi Gau. "Transparansi Legislatif dalam Lembaga Perwakilan Rakyat" (2008) 1:1 *Jurnal Administrasi dan Kebijakan Kesehatan Indonesia* 35–40.
- Kartini, Dede Sri. "Demokrasi dan Pengawas Pemilu" (2017) 2:2 *Journal of Governance*.
- Landa, Dimitri & Ryan Pevnick. "Representative Democracy as Defensible Epistocracy" (2020) 114:1 *American Political Science Review* 1–13.
- Mohammad Mahfud, M D. "Perkembangan Politik Hukum: Studi tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia" (1993) Disertasi, Pasca Sarjana Ilmu Hukum Universitas Gajah Mada, Yogyakarta.
- Mubiina, Fathan Ali. "Pola Hubungan Fraksi dengan Lembaga Dewan Perwakilan Rakyat Republik Indonesia Pasca Reformasi" (2020) 8:1 *Diktum: Jurnal Ilmu Hukum* 36–69.
- Prahassacitta, Vidya. "The Concept of Extraordinary Crime in Indonesia Legal System: is the Concept An Effective Criminal Policy?" (2016) 7:4 *Humaniora* 513–521.
- Rauf, Muhamad Aljebra Aliksan, Marten Bunga & Hardianto Djanggih. "Hak Recall Partai Politik Terhadap Status Keanggotaan Dewan Perwakilan Rakyat dalam Sistem Ketatanegaraan Indonesia" (2018) 7:4 *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 443–455.
- Salang, Sebastian. "Parlemen: Antara Kepentingan Politik vs Aspirasi Rakyat" (2006) 3:4 *Jurnal Konstitusi* 90–120.
- Sanusi, HM Arsyad. "Relasi Antara Korupsi dan Kekuasaan" (2009) *Jurnal Konstitusi* 83–104.
- Shubhan, Hadi. "Recall: Antara Hak Partai Politik dan Hak Berpolitik Anggota Parpol" (2006) 3:4 *Jurnal Konstitusi* 3057.
- Sonnicksen, Jared. "Dementia and Representative Democracy: Exploring Challenges and Implications for Democratic Citizenship" (2016) 15:3 *Dementia* 330–342.
- Syafriadi, Syafriadi. "Pelaksanaan Demokrasi dalam Sistem Ketatanegaraan Indonesia" (2017) 1:1 *UIR Law Review* 25–38.
- Teehankee, Julio. "Electoral Politics in the Philippines" (2002) *Electoral Politics in Southeast and East Asia* 149–202.
- Welp, Yanina & Juan Pablo Milanese. "Playing by the Rules of the Game: Partisan Use of Recall Referendums in Colombia" (2018) 25:8 *Democratization* 1379–1396.
- Zikri, Maulana Akmal & M Zuhri. "Tinjauan Yuridis Tentang Hak Recall Oleh Partai Politik Berdasarkan Konsep Kedaulatan Rakyat Dalam Lembaga Perwakilan Di Indonesia" (2018) 2:2 *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 358–368.
- "Kasus Harun Masiku, Kader PDIP Didakwa Suap Rp600 Juta", online: <https://www.cnnindonesia.com/nasional/20200402135522-12-489583/kasus-harun-masiku-kader-pdip-didakwa-suap-rp600-juta>.