

# Penderogasian hak asasi manusia melalui penyederhanaan partai politik dalam sistem ketatanegaraan Republik Indonesia = Derogation of human right by simplification of political party in the constitutional system of Indonesia

Erfandi, author

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## Abstrak

Eksistensi penderogasian HAM melalui penyederhanaan partai politik dalam dialektika negara hukum (rechstaat) mulai banyak dikaitkan dengan konsep ketatanegaraan yang demokratis, baik dalam masa demokrasi tidak langsung (undirect democracation) atau pada masa demokrasi langsung (direct democracation) di Indonesia, realitas ini ditandai dengan munculnya Parlimentary Treshold dalam UU Pemilu dan UU partai politik.

Untuk memfokuskan pembahasan diatas, terutama yang berkaitan dengan korelasi HAM dan Partai Politik dalam sistem ketatanegaraan Republik Indonesia. maka perlu dibatasi dengan metode yuridis normatif dengan menelaah kepustakaan dan perundang-undangan yang berhubungan dengan HAM dan Partai politik, serta mempertajam analisa secara komprehensif untuk memberikan solusi terhadap kebuntuan ketatanegaraan Republik Indonesia saat ini dengan menggunakan Metode preskriptif evaluatif.

Berhubungan dengan penegakan HAM melalui penyederhanaan partai politik akan banyak menimbulkan permasalahan ditengah maraknya sistem multi partai.

Disatu sisi banyaknya partai politik dalam sistem presidensial akan berimplikasi terhadap efektifitas kinerja parlemen dan Presiden dalam menjalankan tugas dan fungsinya. Disisi lain adanya pembatasan partai politik ditengarai sebagai bentuk pembatasan HAM terhadap setiap indifidu yang justru bertentangan dengan semangat hak asasi untuk terlibat dalam pemerintahan. Tidak cukup hanya berdasarkan atas Konvenan Internasional Pasal 4 yang melegitimasi adanya pemabatasan terhadap hak sipil politik atau bersandarkan kepada Pasal 28 J yang menagtur pembatasan HAM, melainkan dibutuhkan perundang-undangan yang mengatur lebih teknis tentang mekanisme penderogasian terhadap partai politik, baik melalui syarat pembentukan partai dan/atau syarat masuknya partai politik ke parlemen sehingga akan berdampak pada kinerja di parlemen dan efektifitas sistem presidensial yang sudah ada.

Konsep penderogasian tersebut, tidak hanya berhenti melalui penderogasian terhadap partai politik melainkan dilanjutkan dengan penyederhanaan fraksi di parlemen sebagai wujud balances system di parlemen. Pembentukan dua fraksi, posisi dan oposisi sangat penting dilakukan untuk efektifitas pemerintahan dalam sistem presidensial dengan sistem multi partai seperti Indonesia ini.

.....The Existence of Human Rights derogation through political party simplification in Law State (rechstaat) dialectics has been started to be associated with the democratic constitutional concept, either in indirect democracy era or direct democracy era in Indonesia. This reality is marked by the emergence of Parliamentary Threshold in Election and Political Party Laws.

To make focus the above discussion which is primarily about the correlation between Human Rights and Political party in Indonesian Constitutional System, the limitations are made. The research is limited by means of Juridical Normative Method by reviewing the literature and the laws that are related to Human Rights and Political Party. Moreover, it is also important to sharpen the analysis comprehensively to give the

solution towards the impasse of current Indonesian Constitutional System by using Prescriptive Evaluative Method.

Human Rights establishment through the simplification of political party will trigger many problems in the midst of multi-party system. On one side, the amount of political parties in presidential system will have an implication towards the effectiveness of parliamentary performance and president in running their duties and functions. On the other side, the existence of political party limitation is suspected as the form of Human Rights restraint towards each individual which is contradict with the spirit of right to involve in governmental ruling. The 4th article of international covenant which is legitimate the existences of the political civil right limitation or the 8th J article of Human Rights restriction Laws are not enough. In spite of that, the laws which regulate about derogation mechanism more technically toward political party are needed. They are needed either through the requirement of party establishment and/or the requirement of political parties? inclusion into parliament, thus it will have an impact towards their performance in the parliament and the effectiveness of the current presidential system.

That derogation concept is not only stopped through the political parties derogation but also continued with the simplification of factions in the parliament as the form of balanced system in the parliament. The establishment of two factions, position and opposition is very important for government effectiveness in presidential system with multi-party system such as in Indonesia.