

An Analysis on the Legal Standing of Dissolution of Political Parties in The Court of Appeals of Timor-Leste

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ABSTRACT: *Timor-Leste is a sovereign country. One way of demonstrating the sovereignty of the people is through the election among political parties competing seats in the Parliament. Political parties are the main pillars of democracy. The existence of political parties as a manifestation of the freedom of association is needed in a sovereign and democratic country. However, its existence must be in accordance with the existing legislation. Political parties are an essential part of democratic order because it manifests freedom of association as guaranteed in the constitution. If political parties carrying its activities out exclude the corridor that has been set, it could lead to being dissolved. The article aims to examine the idea of disbanding political parties have an impact on constitutional rights of citizens in association, the legal standing for the State to dissolve political parties through Court of Appeals of Timor-Leste and whether it violates constitutional rights of citizens to freedom of association as set in the Article 41 paragraph 1 of the Constitution. The method used is normative research method, enhanced with historical approach, and case approach.*

KEYWORDS: legal standing, political party dissolution, freedom of association, court of appeals of Timor-Leste.

INTRODUCTION

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

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

Based on the above international covenants, an organization is allowed to set its basic and domestic system. The organization 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. However, 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 Democratic of Timor-Leste has given a firm assurance that everyone has the right to freedom of assembly, association and speech. It is explained in the Article 43, Paragraph 1. 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 form a very important role in the Timor-Leste. It plays 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 impossibly 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 socialization, (iii) a means of political recruitment, and (iv) conflict settings. The four functions are interconnected to each other.²

However, there is another dimension to the link between a political party and a democratic state. Relations of between the party and its members, as well as the party's organization and structure, will determine the extent of internal democracy. Some parties adopt an oligarchic structure that affect the party leadership. 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 organization. Addressing the problem, a supporting mechanism is required. First, an internal mechanism could ensure democratization through members' participation of political parties in

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

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 organizations' 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.³

Although regulated in Timor-Leste's Political Parties Law, the Court of Appeals is yet to receive or handle a case on the dissolution of political parties up to date. Therefore, it has become relevant to learn of the experiences and general principles established by other countries in dissolving political parties through the Court. Consequently, Timor-Leste is committed to respecting international human rights norms and following the existing jurisprudence of human rights bodies.

In line with this, the existence of political parties is the result of democracy and the proof of the 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 43 and 46⁴ of the Constitution of Republic Democratic of Timor-Leste and Article 16 of the Government Decree No. 16 of 2017.⁵ Therefore, this study raises the issue on "normative juridical analysis of the legal standing of dissolution of political party in the Court of Appeals."

RESEARCH METHODOLOGY

The research article entitled "An Analysis on The Legal Standing of Dissolution of Political Parties in the Court of Appeals of Timor-Leste" is juridical normative research known as library legal research. It employs a comprehensive methodology that combines legal analysis, doctrinal research, historical research, comparative research, and contextual examination to provide a thorough understanding of the topic. Basically, legal research is looking for solutions to legal issues that arise in order to get prescriptions for what should be done on the issues discussed by Marzuki, (2010).

The research design of this study is based on a normative juridical research approach, which involves the systematic analysis of legal principles, statutes, regulations, and constitutional provisions related to the legal standing of dissolution of political parties in the Court of Appeals. This methodology incorporates four main research methods: statutory approach, doctrinal research, historical approach, case approach and comparative approach.

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

⁴ Article 43 and 46 of the Constitution of the Republic of Timor-Leste.

⁵ Article 16 of the Government Decree No. 16/2017 of May 12, Regulation on the submission of nominations for the election of deputies to the National Parliament.

The legal references referred to in this research are drawn from Constitution of the Republic Democratic of Timor-Leste, laws and regulations, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of Racial Discrimination, and the European Convention for the Protection for the Protection of Human Rights and Fundamental Freedoms (ECHR). In addition, it also uses relevant academic references from books, journal articles, and reports to justify its arguments. It equips a comparative study, the analysis in this research refers to important decisions in Republic of South Korea the United Progressive Party (UPP) was dissolved by Constitutional Court of South Korea on December 19, 2014. These sources form the basis for in-depth analysis and interpretation.

The collected data is analyzed through a qualitative approach, involving a systematic review, categorization, and synthesis of relevant legal provisions, scholarly insights, and contextual information. The analysis aims to identify patterns, contradictions, and implications within the legal framework, as well as to assess the compatibility of the legal measures with democratic norms and human rights.

RESULTS AND DISCUSSION

1. Analysis of Decision of the Court of Appeal on Dissolution of Political Parties in Timor-Leste

The restrictions on freedom of association within political parties began strengthened at the time of implementation of guided democracy, which was by Law No.4/2004 of April 14 and amended by Law No.2/2016 of February which regulates the conditions for recognizing political parties as legal entities and the dissolution of political parties and their legal consequences with the aim of simplification of political parties.⁶ This setting is based on the view that the existence of political parties is one of the characteristics of liberal democracy. Restrictions also serve the basis for the dissolution of political parties is related to compliance with the principles and goals of the country as well as integrity of national territory. Nevertheless, the reasons for the disbandment of political party should stand within the limitations necessary for a democratic to function. The dissolution was carried out through a judicial process by the Court of Appeal. The latter also provides binding considerations. It strengthens the democracy nature in accordance with the principles of the dissolution of political parties, the rule of law and democracy.

In practice, there are several political parties in Timor-Leste that have been disbanded in 2007, 2012, 2017, 2018 and 2023 legislative elections, namely UDC, PL, APODETI, PDM, PPT, PNT, PUN, KOTA, PSD, and ASDT.

- 1) The União Democrata-Crista de Timor (Christian Democratic Union of Timor) with the leadership of Vicente da Silva Guterres was represented in the National Council (NC) in was

⁶ Law No.4/2004 of April 14 as amended by Law No.2/2016 of February

founded in May 2000. Guterres represented also the UDC in the *Conselho Nacional the Resistência Timorese (CNRT)*, the umbrella organization of the Timorese resistance, to which Guterres belonged since its inception in 1998.⁷ At the first legislative elections on August 30, 2001, the party won 0.7% of the popular vote and 1 out of 88 seats.⁸ The party was dissolved in 2007 prior to its board members' own decision in merging with other political parties.

- 2) The Liberal Party was founded in 2001 but it was dissolved in 2007. The party's members were primarily young people who had participated in the resistance against the Indonesian occupation. In the first parliamentary elections on August 30, 2001, the party received 1.10% of the vote and thus one of the totals of 88 seats in the Timor-Leste Parliament. Party leader Armando Dourado da Silva took the seat in the Constituent Assembly which later became the first parliament. In the 2007 legislative elections which was on June 30, the PL did not run with its own list following a decision by party leader Armando da Silva to merge with *Conselho Nacional para a Reconstrução de Timor* (National Congress for Reconstruction of Timor, CNRT).⁹
- 3) The Popular Democratic Association of Timor (Portuguese: Associação Popular Democrática de Timor, APODETI) was founded as a political party in Timor-Leste in 1974, and advocated for integration into Indonesia, where Party leaders believed East Timor would not have been a viable independent state.¹⁰ Since 2000, the party used the suffix *Pro-Referendo* (Pro-referendum).¹¹ The party was dissolved in 2007 prior to board members' decision in merging with other political parties.
- 4) The Maubere Democratic party (Portuguese: *Partido Democrático Maubere*, PDM) was established in 2000 but it had no representation in the Assembly Constituent. It had quite minimal mass support, though has a strong influence because the characters are known as scholars and technocrats who played a major role in the government and development. The party was dissolved in 2007 because of its own decision in merging with other political parties.
- 5) The Millennium Democratic Party (Tetum: *Partido Milénium Democrátiku*, PMD) is a centrist political party in East Timor founded in July 2004 and registered on 30 December 2005. It was dissolved in 2012 due to minimal mass support. However, in the parliamentary

⁷ Pat Walsh: *East Timor's Political Parties and Groupings Briefing Notes*, Australian Council for Overseas Aid 2001 at the Wayback Machine (archived 2007-01-01).

⁸ "TIMOR-LESTE: parliamentary elections Constituent Assembly, 2001". *archive.ipu.org*. Retrieved 2 November 2022.

⁹ Shoemith, Dennis (October 2011). "Political Parties and Groupings of Timor-Leste". Australian Labor International (3rd ed.). Archived from the original on 7 May 2012.

¹⁰ Ibid, Dunn, p. 62.

¹¹ "Asian Forum for Human Rights and Development - Political Parties of Timor Leste". *web.archive.org*. 2011-09-03. Retrieved 2022-12-13.

election held on 30 June 2007, the party won 0.69% of the total votes and did not win any seats in parliament, as it did not reach the 3% threshold to win seats.

- 6) The People's Party of Timor (Portuguese: Partido do Povo de Timor, PPT) is a conservative political party which was initially established in 1974 with its predecessor being the *Movimento do Povo de Timor-Leste (Movement of the People of Timor-Leste)*. The party has its supporters primarily among Timor's traditional petty kings, the *Liurai*, primarily in the Municipality of Ainaro. The party has its roots in the section of the population that was in favor of East Timor's permanent annexation to Indonesia. In the first legislative elections, August 30, 2001, the party won 2.01% of the popular vote, winning two of the 88 seats in the East Timor's Parliament. For the first legislative elections after the independence on June 30, 2007, the PPT drew up a joint electoral list with KOTA under the name *Aliança Democrática KOTA/PPT. Aliança Democrática* The AD KOTA/PPT ultimately received 3.20% of the valid votes which gained 2 out of 65 seats. The alliance was dissolved after the election.¹² The PPT was not admitted to the 2012 parliamentary elections because it did not submit its electoral list to the electoral authorities by the deadline. It was dissolved automatically.
- 7) The Timorese Nationalist Party (Portuguese: Partido Nacionalista Timorense, PNT) is a political party and the party's president is Abilio de Araújo, who was FRETILIN's representative overseas during the Indonesian occupation until his dismissal in 1993. In the parliamentary election held on August 30, 2001, the party won 2.2% of the popular vote and 2 out of 88 seats. Following the 2007 parliamentary election, the PNT received only 10,057 valid votes, which corresponds to 2.42% and did not win any seats in parliament, as it did not reach the 3% threshold to win seats.¹³ The PNT was not admitted to the 2012 parliamentary elections because it did not submit its electoral list to the electoral authorities by the deadline.¹⁴ It was then dissolved automatically.
- 8) The National Unity Party (Portuguese: Partido Unidade Nacional, PUN) was established in October 2005 and the President of the Party was Fernanda Borges. said it had a base of 100,000 people, which was a tenth of the population. At its founding party congress, 426 delegates from 131 villages from eight districts at the time were said to have been present. There was a dispute with the Ministry of Justice over the registration of the party. Only the Court of Appeal confirmed the registration for the parliamentary elections held on June 30, 2007, of which, the party won 4.55% of the total votes and 3 seats in the parliament, including

¹² "Dennis Shoemith: Political Parties and Groupings of Timor-Leste, Australian Labor International, October 2011".

¹³ Comissão Nacional de Eleições Timor-Leste, 9 July 2007.

¹⁴ Notícias Timor-Leste (SAPO): *CNE apresenta lista de partidos para as legislativas*, 14. Mai 2012. Retrieved on June 21, 2023, at 23:32 OTL.

that of its leader Fernanda Borges.¹⁵ It did not win any seats in the 2012 election because it failed with only 3,191 votes (0.68%) at the three percent hurdle.¹⁶ The party failed to submit its candidature lists on time in 2017 legislative election and it dissolved from then on.

- 9) The KOTA was founded in 1974 but during colonial power, Portugal did not recognize them as a party because they had too few supporters. The KOTA found their support primarily among the Liurais, the traditional petty kings of Timor, but less so among the population. It remained more of a Liurais association until its demise 30 years later.¹⁷ In the parliamentary election held on 30 August 2001, the party won 2.1% of the popular vote and 2 out of 88 seats. According to provisional results, the party won together with the People's Party of Timor 3.20% of the vote in the June 2007 parliamentary election, and 2 seats.¹⁸ For the first post-independence parliamentary elections on June 30, 2007, KOTA drew up a joint electoral list with the PPT under the name *Aliança Democrática KOTA/PPT*. The *Aliança Democrática KOTA/PPT* finally received 13,294 votes, which is 3.20% of the valid votes. Manuel Tilman from the KOTA and Jacob Xavier from the PPT then moved into the national parliament of Timor-Leste with 65 members of the Parliament for the alliance. The alliance was dissolved again after the election.¹⁹ In the 2012 general election, the KOTA formed a new *Aliança Democrática together with the Partido Trabalhista (PTT)*. The PPT did not submit an election list to the electoral authorities. KOTA/PTT failed at the three percent hurdle. They received only 2,622 votes (0.56%). In April 2016, Tilman announced a collaboration with the *Partido Libertação Popular (PLP)*. KOTA disappeared from the list of registered parties until the parliamentary elections on July 22, 2017.²⁰ The party is considered dissolved based on unregistered to participate in the legislative election in 2017 and so on.
- 10) The ASDT was the original ASDT of 1974 which became FRETILIN and the current party of the same name was founded by the late ex-Timorese President Francisco Xavier do

¹⁵ Comissão Nacional de Eleições Timor-Leste, July 9, 2007, "[National Provisional Results from the 30 June 2007 Parliamentary Elections](#)".

¹⁶ *Ibid* 15.

¹⁷ Walsh, Pat (2001). *East Timor's political parties and groupings briefing notes*. Canberra: Australian Council for Overseas Aid.

¹⁸ Comissão Nacional de Eleições Timor-Leste, 9 July 2007, , "[National Provisional Results from the 30 June 2007 Parliamentary Elections](#)".

¹⁹ *Ibid* Dennis Shoemith.

²⁰ "Timor-Leste/Eleições: 23 candidaturas apresentadas às eleições parlamentares de 22 de julho". www.dn.pt (in European Portuguese). Retrieved 7 October 2022.

Amaral.²¹ In the Parliamentary election held on August 30, 2001, the party won 7.8% of the popular vote and 6 out of 88 seats.²² In 2007 parliamentary election, ASDT which was then led by the Secretary-General Gil Alves formed an alliance with the Social Democratic Party (PSD) won 15.73% of the vote and 11 seats. In 2012 party President Francisco Xavier do Amaral died, due to this and the previous problems made ASDT split into two, namely the Gil Alves camp as Secretary General and the interim President of the party and the João Correia camp which carried Ramos-Horta as honorary president. In the end, the decision of the Court of Appeal of Timor-Leste in favor of João Correia's version of ASDT.²³ In 2017 the same thing happened again, in the internal stronghold of the ASDT party there was a power struggle between two camps, namely the Francisco da Silva camp as president and João Correia's camp as its leader.²⁴ And because there were two versions of the ASDT party, the Court of Appeal stated that the ASDT party could not contest in the July 2017 legislative election.²⁵ And since 2018 the party have not attended elections for five years either at the local and national level with their own program. The ASDT party must declare the loss of its status as a political party in accordance with the law and the decision made by Court of Appeal from the consequence of not submitting the list of candidates on time for the May 2018 early Parliamentary Election. The ASDT party appealed against the decision and was rejected. In 2021, the Court of Appeal again declared seven political parties that were restituted since 2018 could no longer take part in general elections including ASDT.²⁶

The reasons for the dissolution of political parties were initially based on Law No. 2/2004 of April 14, on Political Parties as amended by Law 2/2016 of February. The law reasoned its formulation to cover a member of aspects, not only violation of prohibitions or obligations, but also against the

²¹ Profile: Francisco Xavier do Amaral", BBC News, 15 May 2002,

http://news.bbc.co.uk/2/hi/special_report/1999/05/99/east_timor/1916419.stm. Retrieved on June 30, 2023, at 23:31 OTL.

²² *East Timor, UN Transitional Administration (6 September 2001)*. "UNTAET Daily Briefing 06 Sep 2001: Final election results in East Timor", <https://reliefweb.int/report/timor-leste/untaet-daily-briefing-06-sep-2001-final-election-results-east-timor>. Retrieved on June 30, 2023, at 23:45 OTL.

²³ Leach, Michael (8 June 2012). "Timor-Leste: the parliamentary campaign begins". Inside Story, <https://insidestory.org.au/timor-leste-the-parliamentary-campaign-begins/>. Retrieved on June 29, 2023, at 23:54 OTL.

²⁴ *de Notícias, Diário (5 June 2017)*. "Timor-Leste/Eleições: 23 candidaturas apresentadas às eleições parlamentares de 22 de julho". [Diário de Notícias](https://diario-noticias.com). Retrieved on June 30, 2021.

²⁵ *Post, Dili (9 August 2020)*. "ASDT Ejize PN Altera Lei ParPol". *Dili Post*. Retrieved 29 June 2021.

²⁶ *Vieira, Zevonia*. "TR Deside ParPol 7 Sei La konkorre Iha Eleisaun Parlamentar Tanba La Prienxe Kritériu", <https://neonmetin.info/buletin/2021/07/28/tr-deside-parpol-7-sei-la-konkorre-ih-eleisaun-parlamentar-tanba-la-prienxe-kriteriu/>. Retrieved on July 2, 2023.

established requirements.²⁷ These requirements are formulated more specifically in Government Decree No. 16/2017 of May 12, Regulation on the Submission of Nominations for the Election of Deputies to the National Parliament.

3.2. Implications of the Dissolution of Political Parties on Citizens' Constitutional Rights

A political party is an association of citizens who pursue their political objectives through the democratic formulation of the political will of citizens. The institutionalization process of democracy is fundamentally determined by the institutionalization of political party organization as an integral part of the democratic system itself. Democracy is a living system of government that can only prosper by being reinvented again and again. Because in many ways, democracy is a form of conflict management within states, just as diplomacy is a form of conflict management within states. Both usually lead to a compromise between different views and different interests, that is the case when a decision requires both agreement between and within states.²⁸

However, MacIver (1955:194) argues that democracy is a political phenomenon, a way of distributing power and making social decisions that foster the creative trust of free social energies.²⁹ Therefore, developing a new system which is called democracy indirectly guaranteeing and upholding the will of the people in the system in which people still hold a central role as the highest power. Though in its implementation, it is carried out by the representatives elected by the people through various branches of power, such as the executive body, legislative body and judicial body.³⁰

Therefore, a democracy cannot exist without the presence of a political party. This is clear from the function performed by the political parties. Political parties even offer access to government machinery and welfare schemes. It serves as a link between the citizen and the government officer.

The power is distributed among the political party cadres (political recruitment function) to the legislative body, executive body and judiciary body. They bring people to achieve control of the government, develop policies favorable to their interests or the groups that support them, and organize voters to vote for their political party. Although very much involved in the operation of government at all levels, political parties are not the government itself, and the Constitution makes

²⁷ Government Decree No. 16/2017 of May 12 – Regulation on the Submission of Nominations for the Election of Deputies to the National Parliament.

²⁸ Clingendael Magazine (March 2018), Government of the people, by the people, for the people, <https://www.clingendael.org/publication/government-people-people-people>, retrieved on March 2023.

²⁹ Robert M. MacIver (Indiana Law Journal, Volume 29, Issue 1, Article 8) Democracy and the Economic Challenge, file:///C:/Users/joana/Downloads/Democracy%20and%20the%20Economic%20Challenge%20by%20Robert%20M.%20MacIver.pdf.

³⁰ Treg A. Julander, Democracy Without Political Parties, America in The 21st Century: Political and Economic Issues-3 (UK: Nova Science Pub. Inc., 2002).

no mention of them. When in power, a party attempts to put its philosophy into practice through legislation. The appointed executive members and so on by a large majority or coalition government, it may mean that the voters have given the political party or parties a mandate to carry out the program outlined in the campaign.³¹

More concretely, it is practical parties that play a very important role in the implementation of people's sovereignty through general election by:

1. Nominate candidate for President;
2. Nominate candidates for Parliament office appear ranking on single party list. Members of Parliament shall be elected through plurinominal lists, presented by political parties or party coalitions, and each voting citizen shall be entitled to one single vote in the list.
3. Nominate candidates for executive positions, regional and deputy regional head in post-election.
4. Nominate candidates for village and sub-village head in elections.
5. Guarantee participants in general elections to elect Parliament members.

It can be concluded that basically a country needs political parties, and political parties need the state as well. There is symbiotic mutualism. The formation of a political party is one of the manifestations of the freedom of association. Such freedom can be seen as one of the Human Rights which are very fundamental and inherent in humans as social creatures. This is because every human being always tends to socialize and in society is natural for people to choose friends in social relations. The ability of an individual to choose the nature of their relationships with others without interference from third parties, such as their own friends or comrades without being forced or disturbed by a third parties.³²

The Constitutional basis for this right is contained in Article 43 paragraph 1 of the Constitution of the Democratic Republic of Timor-Leste which provides a firm guarantee that everyone is ensured freedom of association provided that the association is not intended to promote violence and is in accordance with the law³³. While the provisions of Article 46 paragraph 1 state that every citizen has the right to participate in the political life and in the public affairs of the country, either directly or through democratically elected representatives, including in the paragraph 2 in the same Article guarantees that every citizen has the right to establish and participate in political parties.³⁴ It means

³¹ Lawrence Leduc, *Comparing Democracies and New Challenges in the Study of Election and Voting* (UK: Nova Science Pub. Inc., 2002).

³² Dennis Shoemith, *Party Systems and Factionalism in Timor-Leste* (Journal of Current Southeast Asian Affairs 39 (2020, Vol. 39), pp. 76.

³³ Democratic Republic of Timor-Leste, *Constitution* (2002), Article 43 paragraph 1.

³⁴ *Ibid*, Article 46 paragraph 1-2.

all parties are aware of that freedom of association is a human right which is the main principle in uphold genuine democracy and the rule of law.

The privileges of upholding constitutional rights must also be linked to the nature of the Constitution itself. First, according to the Herman Heller (1965), Constitution is positivism law or encoded Constitution is recognized as the highest law in a country which is the basis for laws and regulations.³⁵ The nature of the Constitution as a legal basis of highest influence on Constitutional rights, where constitutional rights are more recognized than other rights. It is because it contains the highest legal text that's why it requires more specific and serious enforcement.³⁶

Although human rights are recognized as rights inherent in every human being because of their humanity, there must still be restrictions on these rights. Such restrictions are naturally necessary in public life democracy solely for the sake of maintaining national security and public safety, preventing crime, protecting health and morals, and protecting the rights and freedoms of others.³⁷ There is a constitutional basis, these restrictions are contained in Article 30 paragraph (1) of the Constitution which states that everyone has the right to personal freedom, security and integrity. Everyone is obliged to comply with the restrictions set by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and meet demands accordingly with the considerations of morals, religious values, security, and public order in a democratic society.

Therefore, as an effort to protect the right to associate restrictions must be carried out strictly in a manner that is clearly regulated in law. It needs to be carried out solely to achieve goals in a democratic society, absolutely necessary, and proportionate in accordance with social needs.

Based on the data, there are several political parties in Timor-Leste that have been disbanded in 2007, 2012, 2017, 2018 and 2023 legislative elections, namely UDC, PL, APODETI, PDM, PPT, PNT, PUN, KOTA, and ASDT. All those political parties failed to meet the requirements according Article 1 Paragraph 4 of Law No.2/2016 of February 3 Concerning Political Parties, which states, "An organization's status as a political party shall cease if the organization does not participate with its own program in any election at the local or national level for a period longer than five years." Upon verification of the circumstance provided for in the preceding paragraph, the National Election Commission shall inform the Supreme Court of Justice which is currently exercised by the Court of Appeal in this fact for the purpose of declaring said loss.

Furthermore, based on the Article 17 Paragraph 1 political parties have the following duties:

³⁵ Jimly Asshiddiqie (5), Pengantar Ilmu Hukum Tata Negara, (Jakarta: Rajawali Pers, 2012), p. 99.

³⁶ Ibid, pp 114.

³⁷ Hillaire Barnet, Constitutional and Administrative Law, Fifth Edition, London-Sydney-Portlad, (Oregon: Cavendish Publishing Limited, 2004), pp. 589

- a) respect the Constitution and the laws;
- b) to notify the Supreme Court of Justice of any changes to the statutes, party program, identity of party leaders, change of address of the national office, change of symbol, and merger or association in coalitions, fronts or movements;
- c) possess the required bank accounts;
- d) publish the accounts on an annual basis after they have been audited.

In the paragraph 2 of the same Article, it states, "Political parties shall be expressly forbidden to:

- a) resort to violence or to envisage the use of force in order to change the political and social order of the country;
- b) foment or divulge separatist, integrationist, discriminatory, anti-democratic, racist, regionalist or fascist policies or ideologies.

While in Article 12, it states:

1. The name, abbreviation, flag, emblem and anthem of a political party cannot be identical or similar to those belonging to any other party that has previously existed.
2. The name of the party cannot include the name of a religious denomination or a person, and its symbol cannot be confounded with any national symbols or religious images.

Article 22, political parties shall be prohibited from accepting donations from:

- a) public companies;
- b) companies, the capital stock of which belongs exclusively or mostly to the State;
- c) public service corporations;
- d) corporate bodies of public interest committed to philanthropic or religious activities;
- e) professional, labor or employer's associations;
- f) foundations;
- g) governments or foreign corporate bodies.

From the provisions above, it can be concluded that basically, the Political Parties Law regulates obligations and prohibitions against inappropriate actions carried out by political parties. Since political parties are endemic to democracy the expression of societal interests will critically influence the quality of democracy. Political parties are markers of democracy, inevitable expression of its advance, without being causally connected to all that is presumed good about democracy. Democracy works and assesses how well parliament members and government members perform the functions imputed to it, such as responsiveness, representation, accountability, and realization of the public good.

Therefore, if a political party intentionally or unintentionally does not carry out its constitutional obligations in violation of existing provisions, then the Court of Appeal provides sanctions, starting from the lightest in the form of administrative sanctions to the most serious which is the dissolution of political parties.

The existence of political parties is a manifestation of human rights in particular the right to association which is inherent in every person because of their humanity. In its implementation, there must still be restrictions in an effort to protect the rights of others. Sanctions on political parties are important to guarantee the principle of freedom of association, and the procedure regarding measures restricting the activities of the political parties shows the authorities' concern for respecting the principle of freedom of association. When it happens, of course, it will hinder political parties in carrying out political communication functions, political socialization, political recruitment and means of managing conflict. It is regulated in Article 1 Paragraph 1 to 4 of Law Number 3/2004 on Political Parties as amended by Law Number 2/2016, if it is against the *inter alia*, the following objectives:

- a) to protect the national interests;
- b) to contribute to the exercise of the political rights of citizens and to the establishment of national policies, namely through participation in elections or through other democratic means;
- c) to define government programs as well as administrative programs;
- d) to participate in activities of the organs of the State and of the organs of local government;
- e) to promote civic education as well as political awareness and doctrines amongst the citizens;
- f) to discuss issues of national and international scope and to take a stance on such issues;
- g) to contribute to the overall development of political institutions.³⁸

The Government decrees, pursuant to the provisions of Article 77 of Law no. 6/2006 of December 28, amended successively by Law no. 6/2007 of May 31, 7/2011 of June 22, 1/2012 of January 13 and no. 9/2017 of May 5, the Regulation lays down the rules for the submission of nominations for the election of Deputies to the National Parliament, the candidate lists are submitted to the Court of Appeal, within a period of thirty days from the date of publication in the Official Gazette of the decree marking the date of the election. in Article 5, it states:

1. The nominations are submitted by political parties, alone or in a party coalition, provided that they are duly registered, and the lists may include citizens not affiliated with the respective parties.
2. No party or coalition can present more than one candidate list.
3. No one can appear on more than one list, under penalty or ineligibility.
4. At the time of submission of their nominations, political parties or party coalitions must prove compliance with the provisions of article 7 (2), article 18 and article 19 (3) and (4) of Law no. 3/2994 on Political Parties, under penalty of rejection of the nomination.

³⁸ Timor-Leste Government: Law Number 3/2004 of April 14 on Political Parties as amended by Law Number 2/2016 of February 3.

The reasons behind the nature of Political Parties are not permanent. Based on Article 15 of Government Decree no. 16/2017, states,

1. An appeal against a decision on the submission of nominations may be filed within one day to the bench of the Supreme Court (STJ).
2. The application of filling an appeal, which contains the grounds of appeal, shall be accompanied by all the evidence.
3. The appeal shall be decided within two days of the expiry of the period in paragraph.
4. The list of candidacies definitively accepted is sent immediately to CNE and STAE.

Concerning the legal standing of filing a dissolution application for political parties, political parties are a bridge between people's sovereignty and state institutions where one of its functions is aggregated the interests and desires channeled to institutions related to state institutions. Political parties are only institutions entrusted by sovereignty through general elections to fill existing political positions and representations.

1.3. Juridical Review of the Legal Standing on the dissolution of political parties in the Court of Appeal

It is not guaranteed that everyone may submit a petition to the Court of Appeals and become an applicant. According to Article 126 Paragraph 2 which states, "it is incumbent upon the Supreme Court of Justice, in the specific field of elections to certify at last instance the regularity and validity of the acts of the electoral process, in accordance with the respective law."³⁹ In accordance to the Law No. 3/2004 on Political Parties, failure of political party to participate in any local or national election with their own programs for a period exceeding 5 years shall lose political party status. While, according to Article 5 paragraphs 1 and 2 of the Government Decree 6/2017, "1. The nominations are submitted by political parties, alone or in a party coalition, provided that they are duly registered, and the lists may include citizens not affiliated with the respective parties; 2) No party or coalition can present more than one candidate list.

The normative provisions that mandate legal standing provides procedural to every citizen. If there is a legal interest, then we may file a lawsuit. Before stating the reasons why citizens have legal grounds to be included as the applicant in the case of the dissolution of a political party. Citizens based on the regulation of the Nationality Act Decree-Law No. 1 of 2004, as well as various international agreements to which Timor-Leste has been a signatory. Regarding Citizenship of the Republic of Timor-Leste is a native Timor-Leste citizen or on the principle of *jus soli*, i.e. by birth in Timor-Leste or under the rules of *jus sanguinis*, i.e. by birth abroad to at least one parent with East Timorese nationality. It can also be granted to a permanent resident who has lived in Timor-Leste for a given period of time through naturalization. The requirements for becoming a citizen or naturalization applications are reviewed by the Minister of Justice, who has the authority to

³⁹ Constitution of the Republic of Timor-Leste, Article 126.

administer all matters pertaining to a nationality except those of service to the country. According to the regulation of the Nationality Act Decree-Law No. 1 of 2004, namely:

1. Minor children under age 15, for whom a judicial petition for full adaptation has been completed;
2. Foreign persons who meet the requirements for regular naturalization and have lived in the territory for a minimum of 10 years;
3. Minor children of parents who have been naturalized, upon the formal request of the parents;
4. Persons who are married to East Timorese nationals, if they have been married for a minimum of five years, have resided in the territory continuously for two years, and prove proficiency in speaking Portuguese and Tetum; or
5. Persons who have performed, in the past, services considered high and relevant to the development of the nation, at the discretion of the legislature.⁴⁰

It means that being able to propose the dissolution of the political party must be Timorese citizens. It is because the Timorese citizens who have a legal basis and types of claims must suffer losses as a result of actions.

Based on the scope and limitations of the definition of citizens above, in the application of dispute over the dissolution of political parties, according to Article 2 Paragraph 1 of the Constitution of the Republic of Timor-Leste states, sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution. While, based on the Cambridge Dictionary, sovereignty is the power of a country to control its own government.⁴¹ It means the doctrine of sovereignty developed in two distinct dimensions: the first concerned with the "internal," the second with the "external" aspects of sovereignty.

Hugo Grotius (1625) defines sovereignty as "The supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden".⁴² It is defined by Dicey that "Behind the sovereign which the lawyer recognizes there is another sovereign to whom the legal sovereign must bow that body is politically sovereign, the will of which is ultimately obeyed by the citizens of the state." If legal sovereignty has to survive, then it must work in close cooperation with political sovereignty. Modern democracy is based on the concept of popular sovereignty which means that the source of all authority is the people. J.J. Rousseau defines

⁴⁰ Jerónimo, Patrícia (March 2017). "Report on Citizenship Law: East Timor (Timor-Leste)" (PDF). *cadmus.eui.eu*. Badia Fiesolana: European University Institute. Archived (PDF) from the original on 4 April 2018. Retrieved on August 10, 2023, at 23:34 OTL.

⁴¹ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/sovereignty>. Retrieved on August 30, 2023, at 21:32 OTL.

⁴² Gauba, O.P, Theories of Political Science. (5th ed. Macmillan Publishers India Ltd., Delhi,2010).

popular sovereignty can merely being understood as ‘people’s affairs. It means that people’s supreme power and ultimate authority rests with them. Rousseau calls it as a ‘‘general will’’.⁴³ Without the people there will be no possibility of democracy. Democracy can be called a mechanism in the system of state governance in order to realize popular sovereignty (citizen power). Democracy provides many benefits if done in a directed and orderly manner.⁴⁴ The implementation of democratic values of life is, inevitably, requires the support of the people in administering the constitution. All decisions from the government cannot be separated from people's opinions in the form of voice, supervision, and participation in the process of forming and implementing all policies taken by the government.

As a theory, none of the teachings on popular sovereignty can be called the most modern. It's just to be admitted, almost all modern countries today, formally claim to adhere to the principle of popular sovereignty. The principle of the People's Sovereignty or the notion of democracy contains two meanings:

- a. Democracy relating to the system of government or how people are included in the administration of government.
- b. Democracy as a principle that is influenced, cultural conditions, a nation's history so that the term appears, constitutional democracy, and people's democracy.⁴⁵

There are two principles in implementing popular sovereignty. First, the principle of popular sovereignty is implemented through power delegation in the form of institutions or representative democracy. Secondly, the principle of popular sovereignty is implemented directly by the people holding general elections to elect the President of the Republic of Timor-Leste, Chief Village or *Chefe do Suco* and Chief of sub-village or *Chefe de Aldeia*. The concept of Dr. Donny Gahril Adian (2019), popular sovereignty has been handed over to political representation, whether executing, adjudicating or supervising power, but in reality, the sovereignty of people has never been. Even though sovereignty has been handed over by the people to their representatives, political representation through political parties but representatives must still work for the benefit of the people.

It needs to be realized that the beginning of the establishment of political parties was based on people’s needs, therefore people are also given the right to supervise the activities of political parties. It is in accordance with the mandate or not, that people are given means to monitor the performance of political parties, one of which is through proposals for dissolution of political

⁴³ Jean Jacques Rousseau, *Du Contract Social (Perjanjian Sosial)*, Jakarta: Visimedia, 2009), p. 56.

⁴⁴ Azmi, *Demokrasi Dalam Negara Berdasarkan Hukum Pancasila dan Masyarakat Islam*, Journal AlQalam, Vol. 33, No. 2, July-December 2016, p. 2.

⁴⁵ Jimly Asshiddiqie, *Gagasan Kedaulatan Rakyat Dalam Konstitusi Dan Pelaksanaannya di Indonesia*, P.T Ictiar Baru Van Hoeve, Jakarta. 1994, p. 11.

parties. If the existence of political parties endangers the country, then people can propose to dissolve as people have the right to establish any political party.

Therefore, when referring to the principle of implementing popular sovereignty according to the Constitution of the Republic of Timor-Leste, the dissolution of the political party shall not be limited solely to state authority alone. However, the people must also be given the power to represent themselves in exercising its sovereignty by involving it as a Petitioner for the dissolution of political parties. It means that the application of Article 15 paragraph (5) of the Law Number 3 of 2004 regulates the dismissal of political parties due to non-compliance with the provisions of items 1 and 2 of Section 5 and the political party replaces it within forty-eight hours so that the registration is authorized, the registration shall be deemed as having taken place on the date of the initial decision that led to the dismissal of the registration. It contradicts and violates the principle of popular sovereignty itself because it only accommodates the idea of representative democracy and forgets the idea of direct democracy.

Second, Timor-Leste is a rule of law country as stated in Article 2 paragraph (2) of the Constitution of the Republic of Timor-Leste. Even though it is in the Constitution and no statutory regulations explain explicitly what concept of the rule of law is adopted by Timor-Leste, in fact, there are many doctrines that explain the principle of a law-based country. First, according to Friedrich Julius Stahl, the consequences of a country adopting the rule of law are:

- a. Recognition of human rights;
- b. Separation of state powers;
- c. Government based on law;
- d. There is administrative justice.⁴⁶

Second, according to A. V. Dicey (2012), there are 3 characteristics of a rule of law state, namely:

- a. The rule of law means there should be a lack of arbitrariness or wide discretionary power.
- b. Even government authorities are duty-bound to obey the same law and they have no special orders to deal with their causes.
- c. In many countries rights such as personal liberty, freedom, etc. are written down in the constitution.⁴⁷

Third, according to Prof. Jimly Asshiddiqie (2006) to create a country's essential law, a supporting pillar consisting of:

- a. Rule of law;
- b. Equality in law;
- c. Principle of legality;
- d. Independent supporting organs;

⁴⁶ Fatkhurohman, Dian Aminudin and Sirajuddin, *Memahami Keberadaan Mahkamah Konstitusi Di Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2004), p. 6.

⁴⁷ Noram S. Marsh, *The Rule of Law in free society*, International Jurist Commission. p. 5.

- e. The judiciary is free and impartial;
- f. State Administrative Court;
- g. Constitutional Court;
- h. Protection of Human Rights;
- i. Democratic in nature;
- j. Functions as a means of realizing state goals;
- k. There is transparency and social control.⁴⁸

Fourth, according to Scheltema (1994), the elements of a legal state are as follows:

- a. Legal certainty;
- b. Equality in law;
- c. Democracy;
- d. A government that serves the public interest.

These four doctrines described above, are the core elements. Because its elements are reflected in the principle of equality before the law for all its citizens. Timor-Leste as the rule of law, *mutatis mutandis* adheres to the principle of equality before the law. It is regulated under Article 16 paragraph (1) of the Constitution of the Republic of Timor-Leste which states all citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties. This principle includes all citizens of Timor-Leste, both rulers and ordinary people. If there is no equality before the law, then people who have political power will feel immune from the law.

Based on the aforementioned, a legal standing on the dissolution of political parties at the Court of Appeal is a legal grant standing which is only granted by Article 15 of the Law on Political Parties which states the decision authorizing or rejecting a provisional registration of a political party rests with the President of the competent Court.

We need to be aware that anyone can submit an application to the Court of Appeal to fight for the rights of citizens both individually or collectively for a decision in his or her favor and award a remedy for the dissolution of any political party. The Court of Appeal is the adjudication of the dissolution or merger of political parties and control over constitutionality of their actions.

Therefore, the role of citizens in carrying out direct supervision regarding the performance of political parties has not been optimal due to the absence of mechanism. In the status quo, supervision of citizens. The State carries out through a general election mechanism, which

⁴⁸ Jimly Asshiddiqie (7), *Model-Model Pengujian Konstitusional di Berbagai Negara*, cet. 3, (Jakarta: Konstitusi Press, 2006), p. 53-65.

citizens can provide rewards and punishment in the form of the act of choosing or not choosing a political party related to its performance and activities in the voting booth.⁴⁹

However, granting legal standing to citizens is just the first step in procedural law at the Court of Appeal. There are further processes that must be taken at trial, starting from preliminary examination, and evidence until the reading of the verdict. The Court of Appeal provides constitutional criteria that are not easy to dissolve any political party.

CONCLUSION

There is none of the articles in the Timor-Leste Constitution relating to the dissolution of political parties. Only in Article 16 of the Government Decree 16/2017 of May 12 does detail the process that should be used by the Court of Appeal to dissolve political parties, but limited to offering an explanation of the initial stage of the decision process. Nevertheless, Article 15 paragraph (5) of the Government Decree Law No. 16/2017 of May 12, concerning “An appeal against a decision on the submission of nomination may be filed within one day to the bench of the Court of Appeal.” It further explains, the citizen can be applicant for the trial case law against constitution, one the rights are constitutionally harmed by the enactment of a law being petitioned for review. However, if the application does not meet the requirements, it shall be rejected and deemed as inadmissible.

It is a constitutional right of citizens of Timor-Leste to establish political parties as stated in Article 46 paragraph 2 of the Constitution of the Democratic Republic of Timor-Leste. However, political parties have an obligation to implement the Constitution and the laws and regulations below as contained in Pursuant to item 3, paragraph i), of Section 95 of the Constitution, Law No.2/2016 of February 3 Concerning Political Parties and the Government Decree 16/2017 of May 12 Regulation on the submission of nominations for the election of deputies to the National Parliament. The political parties can be dissolved because of either its own decision, merging with other political parties or the decision of the Court of Appeal. The decision of the Court of Appeal is based on evidence that the political parties are proven to have violated the prohibitions for political parties regulated in the Political Parties Law. There must be four categories of prohibitions.

First, political parties are prohibited from using the same names, symbols or images:

1. The name, abbreviation, flag, emblem and anthem of a political party cannot be identical or similar to those belonging to any other political party that has previously existed.
2. The name of the party cannot include the name of a religious denomination or a person, and its symbol cannot be confounded with any national symbols or religious images.

⁴⁹ Simona Bevern, “Party Communication in Routine Times of Politics: Issues Dynamics, Party Competition, Agenda-Setting, and Representation in Germany”, (Dissertation Manheim University, Manheim, 2015), p. 18.

If political parties that already have a legal status violate these prohibitions, the political parties shall be subject to administrative sanctions in the form of suspension of the board members of the Court of Appeal.

Second, political parties are prohibited from conducting activities that act in contrast to the Timor-Leste Constitution and the national laws. They are also prohibited from conducting activities that endanger the integrity and national security of the Unitary State of the Republic Democratic of Timor-Leste. Violations of the prohibitions shall be subject to administrative sanctions in the form of temporary suspension of the political parties by the Court of Appeal for a maximum of one year. Furthermore, if political parties that have been suspended still violate those prohibitions, the Court of Appeal can dissolve them.

Third, with regard to financial regulations, political parties are prohibited from:

- a) Public companies;
- b) Companies, the capital stock of which belongs exclusively or mostly to the State;
- c) Public service corporations;
- d) Corporate bodies of public interest committed to philanthropic or religious activities;
- e) Professional, labor or employer's associations;
- f) Foundations;
- g) Government or foreign corporate bodies.

If parties violate these prohibitions, they can be dissolved, however, their boards members can be sentenced to a maximum of one to two years of imprisonment and a fine worth twice the amount of the funds received.

Fourth, political parties are also prohibited from establishing business entities and/or owning shares of business entities. Violations of this prohibition shall be subject to administrative sanctions in the form of suspension of the boards of political parties by the Court of Appeal and District court. Moreover, its assets and shares will be seized by the state. Finally, political parties are prohibited from embracing, developing, and dissemination the teachings against the principles of democratic state. If political parties violate this prohibition, they will not be suspended. Instead, sanctions will be imposed resulting in their dissolution. However, there is no historical event yet to become as a historical and political grounds as lesson-learned.

Based on the applicable laws and regulations explained above, the dissolution of political party is an 'ultimo ratio' in the Timor-Legal system. Political parties in Timor-Leste can be dissolved if their activities are contrary to the Constitution and national laws as well as an endangerment to the integrity and national security of the Unitary State of the Republic Democratic of Timor-Leste. However, they shall be suspended prior to their dissolution.

Due to not having previously received a case on the dissolution of political parties, the Court is largely inexperienced, requiring it to learn from the experience and *ratio decidendi* made by other courts in different country, such as Republic of South Korea, one of the comparative country cited in this thesis. This can be done by familiarizing itself with the various international standards and frameworks concerning political parties. There are several international conventions can be taken into account by the Court of Appeal in dealing with political parties:

1. Article 19 (the right to freedom of opinion and expression) and Article 20 (the right to freedom of peaceful assembly and association) of the Universal Declaration of Human Rights (UDHR).
2. Article 2 (the right to free from discrimination), Article 14 (the limitations on rights and freedoms), Article 19 (the right to freedom of opinion and expression) and Article 22 (the right to freedom of association) of the International Covenant on Civil and Political Rights (2966) (ICCPR).
3. Article 3, Article 4, and Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
4. Article 2 and Article 4 of the International Convention on the Elimination of Racial Discrimination.
5. Article 7 (3) of the United Nations Convention against Corruption (UNCC).

These standards and guidelines are fundamental as a reference for the Court of Appeal and other Districtal Court in dealing with the dissolution of political party cases in a democratic society. International human rights instruments contained in international conventions, such as ICCPR, CEDAW, CERD, and UNCC, are binding by virtue of their ratification by Timor-Leste. However, Timor-Leste is not bound by several international and regional conventions.

International human rights instruments, Constitution of the Republic Democratic of Timor-Leste, Law on Political Parties and relevant case-law have provided broader perspectives on how Court of Appeal dealt with the dissolution of political party cases. The Court of Appeal of Timor-Leste is therefore expected to have a stronger legitimacy and can ensure its compliance with international human rights standards. Using these principles and requirements, the Court of Appeal of Timor-Leste can deliver more judgements with sound legal reasoning. Given that Timor-Leste has no experience in dissolving any political party through the judicial process, the role of the Court of Appeal will be crucial in establishing such principles in accordance with the character and background of the legal, social, cultural and political systems in Timor-Leste.

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