

## **Right to Recall Political Representatives: Legal Audit of Article 85 passage (1) letter c of Regulation Number 22 of 2003 and Article 12 letter b of Regulation Number 31 of the year 2002**

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### **ARTICLE INFO**

### **ABSTRACT**

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The overall game plans for pardoning people from the DPR are contained in Article 22 B of the 1945 Constitution of the Republic of Indonesia read "Individuals from the DPR can be excused from office, the circumstances and systems for which are controlled in regulation" and afterward managed further in Regulation Number 17 of 2014 concerning Individuals' Consultative Get together, Individuals' Delegate Gathering, Territorial Agent Chamber, and Local Individuals' Agent Committee (MD3) and Regulation Number 2 of 2008 concerning Ideological groups. In the legal literature in Indonesia which regulates dismissal and replacement between members of the DPR, political parties have a great role in it. Where these guidelines are contained in Article 239 section (2) letter d of Regulation Number 17 of 2014 concerning Individuals' Consultative Gathering, Individuals' Agent Committee, the Territorial Agent Board, and the Local Nation's Agent Chamber expressed that ideological groups can choose individuals from Individuals' Agent Board who comes from the ideological group itself to be excused. Regarding legal regulations like this, it can be said that political parties have an active role in monitoring members of the DPR.

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### **1. Introduction**

A review is for the most part perceived as the withdrawal of an individual from Individuals' Delegate Chamber (DPR) to be excused and consequently supplanted with one more part before the term of office of the removed individual from the DPR

closes. (Nurhadi, 2019) Another well-known statutory is called interim replacement (PAW), while the word "rights" can be interpreted as those who have the authority to carry out the recall.

The fundamental arrangements for excusing individuals from the DPR are contained in Article 22 B of the 1945 Constitution of the Republic of Indonesia which examines "Individuals from the DPR can be excused from office, the circumstances and methods for which are controlled in regulation" which are then managed further. in Regulation Number 17 of 2014 concerning Individuals' Consultative Get together, Individuals' Agent Chamber, Provincial Delegate Board, and Local Individuals' Delegate Committee (MD3) and Regulation Number 2 of 2008 concerning Ideological groups (Zikri & Zuhri, 2018).

Referring to the legal literature in Indonesia which regulates the dismissal and interim replacement of members of the DPR, political parties have a big role in it. Where these standards are contained in Article 239 passage (2) letter d of Regulation Number 17 of 2014 concerning Individuals' Consultative Gathering, Individuals' Agent Board, the Local Delegate Chamber, and the Territorial Nation's Delegate Committee which expresses that ideological groups can name individuals from Individuals' Delegate Board who comes from the ideological group itself to be excused. Regarding legal regulations like this, it can be said that political parties have an active role in terms of monitoring members of the DPR.

As a rule, ideological groups are members in an overall political race that choose individuals from the DPR. This recommendation is explicitly expressed in the Alterations to the 1945 Constitution. Article 22E passage (3) of the 1945 Constitution expresses that members in the overall political race to choose individuals from Individuals' Delegate Gathering and individuals from the Local Nation's Agent Chamber are ideological groups. This shows that the position of a DPR part is a command given by an ideological group.

Such a legal construction between political parties, the DPR, and members of the DPR raises further issues, namely whether membership of a person as a member of the DPR is the absolute authority of a political party that incidentally participates in elections or does each member of the DPR have independence apart from their political party, and can a DPR member be recalled by a political party that has endorsed him as a member of parliament?

This issue was then utilized as material in the appeal for audit of Article 85 passage (1) letter c of Regulation Number 22 of 2003 concerning the Piece and Position of Individuals' Consultative Get together, Individuals' Delegate Gathering, the Territorial Agent Board, and the Provincial Nation's Agent Committee; and Article 12 letter b Regulation Number 31 of 2002 concerning Ideological groups against the 1945 Constitution.

Recall or what the Political Party Law refers to as an interim replacement by political parties before their term of office expires is submitted to the Constitutional Court by a member of the DPR, specifically Djoko Edhi Soetjipto Abdurahman. Djoko Edhie recorded a legal survey specifically on the arrangements of Article 85 section (1) letter c of Regulation Number 22 of 2003 concerning Susduk and Article 12 letter b of Regulation Number 31 of 2002 concerning Ideological groups which was proclaimed on July 31, 2003. Article 85 passage (1) letter c The Susduk Regulation expresses that "Individuals from the Place of Agents prevent every once in a while

in light of the fact that: c. proposed by the ideological group concerned. Though Article 12 letter b of the Ideological group Regulation expresses that, "Members of political parties who are members of the people's representative institutions can have their membership terminated from the people's representative institutions if: b. dismissed from membership of the political party concerned for violating the statutes and bylaws."

It is the most raised guideline in the country and state where the 1945 Constitution manages the connection between the public authority and its state and relations between government foundations so the Constitution The Republic of Indonesia of 1945 (1945 Constitution) can be supposed to be the constitution of the Republic of Indonesia. The constitution of a nation manages the accompanying issues: a) Determines the limitation of the powers of state organs, b) Regulates the relationship between state institutions one another, and Regulates the relationship of power between state institutions and citizens (Ahmad & Nggilu, 2019) d) The matters that are broadly regulated in the constitution are the implementation of the goals of the formation of the country, where every country in the world is formed having different goals, namely the goals of the nation in the life of the state. Country destinations vary accordingly with the views of the people on the nation and the outlook on life that underlies it.[4]

All as a rule, the objectives of the state are specified in the constitution or the fundamental laws of the nation concerned, one of which is that the reason for the development of the Indonesian state is expressly expressed in the preface to the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which is contained in the fourth section which states: 1) safeguard the whole Indonesian country and Indonesia's carnage; 2) advance public government assistance; 3) teach the existence of the country; and 4) partake in completing world request. In the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the extension and meaning of the law are not extremely clear. Article 20 of the 1945 Constitution just notices the power of the DPR to settle on regulations by common concurrence with the public authority. Article 24 C passage (1) just specifies that the Protected Court has the position to analyze regulations against the Constitution (Munawar et al., 2021). Hence, it is important to complete the question of looking into the material on the option to review the 1945 Constitution of the Republic of Indonesia and survey it once more (Febriansyah, 2016).

Hence, this exploration will talk about the Legitimate Audit of the Option to Review Article 85 section (1) letter c Regulation Number 22 of 2003 concerning the Sythesis and Position of Individuals' Consultative Gathering, Individuals' Delegate Board, the Territorial Agent Gathering, and the Local Nation's Delegate Gathering; and Article 12 letter b Regulation Number 31 of 2002 concerning Ideological groups against the 1945 Constitution.

From the foundation of the above issues can be tracked down a plan of the issue, to be specific; How is the execution of legal survey of the option to review Article 85 section (1) letter c Regulation Number 22 of 2003 concerning the structure and position of Individuals' Consultative Gathering, Individuals' Delegate Chamber, the Territorial Delegates Gathering, and the Provincial Nation's Agent Gathering; and Article 12 letter b Regulation Number 31 of 2002 concerning Ideological groups against the 1945 Constitution.

## 2. Materials and Methods

The technique utilized recorded as a hard copy this applied paper is the distinct logical strategy, to be specific by utilizing information that plainly portrays the issues straightforwardly in the field, then, at that point, the examination is completed and afterward closed to unwind an issue. Strategies for information assortment through perception and writing study to acquire critical thinking in the planning of this paper. In line with the research objectives to be achieved, the realm of the research is included in qualitative research, thus a qualitative approach will be used. According to Petrus Soerjowinoto et al., a qualitative method is a method that emphasizes the process of understanding researchers on the formulation of problems to construct a complex and holistic legal phenomenon.

Regulating juridical methodology, to be specific the juridical methodology strategy used to look at issues from a lawful and legal point of view, namely rules that can be used as a basis for studying problems and their legal consequences (Qamar & Rezah, 2020), for this situation specifically Regulation Number 22 of 2003 concerning Arrangement and The place of Individuals' Consultative Gathering, Individuals' Delegate Committee, the Territorial Agent Board, and the Provincial Nation's Agent Chamber; and Regulation Number 31 of 2002 concerning Ideological groups.

The standardizing juridical methodology is completed on specific legal guidelines or composed regulations, which are connected with the Execution of the Administrative Elements of the DPR In light of the Point of view of the 1945 Constitution of the Republic of Indonesia Post Alteration. This study portrays the state of the item under study, specifically zeroing in on guideline and on the Execution of the Legal Audit of the Option to Review Article 85 section (1) letter c of Regulation Number 22 of 2003 concerning the Piece and Position of Individuals' Consultative Gathering, Individuals' Agent Board, the Provincial Delegate Committee, and Local Individuals' Agent Gathering; and Article 12 letter b Regulation Number 31 of 2002 concerning Ideological groups against the 1945 Constitution (Subagiyo et al., 2017).

## 3. Results and Discussions

### *Core Matters of the Right of Recall*

Democracy is a government by the people where the power of the majority of citizens is exercised. In a modern democracy, the democracy that is carried out is through representation, where the people choose their representatives, according to democratic principles the highest decision in the government of the country rests in the hands of the people through the intermediary of the Representative Body, the Community Members who represent them are called Political Representatives. (Samosir, 2021) In general, the development of political parties runs linearly with the development of democracy, in terms of the expansion of people's voting rights and the expansion of parliamentary rights (Zolberg, 2015)

Recall or what is called by the Political Party Law as an inter-term change by a political party before the end of its term of office is submitted for testing to the Constitutional Court by one of the members of the DPR, namely Djoko Edhi Soetjipto Abdurahman. Djoko Edhie submitted a material test specifically against the provisions concerning Parpol which was promulgated on July 31, 2003.

Article 85 paragraph (1) letter c of the Susduk Law states that "Members of the DPR cease between periods because: c. proposed by the political party concerned." Whereas Article 12 letter b of the Parpol Law states that, "Political party members who are members of the people's representative body can be dismissed from the people's representative body if: b. dismissed from the membership of the political party concerned for violating the basic budget and the household budget."

There are several arguments from the applicant to submit the test of the second article against the 1945 Constitution, among others:

1. Whereas in light of the arrangements of Article 85 passage (2) letter b of Regulation Number 22 of 2003 and Article 12 of Regulation Number 31 of 2002 concerning Ideological groups, DPR individuals who don't meet the prerequisites as possibility for DPR individuals as alluded to in the law on Races General (counting Article 62) excused before the finish of his term of office (interval substitution), the position to excuse him is the power of the DPR Morals Gathering as specified in Article 85 section (4) of Regulation Number 22 of 2003 concerning the Susduk of the MPR, DPR, DPD, and DPRD, and not the power Ideological groups.
2. Likewise Article 12 point c of Regulation Number 31 of 2002 concerning Ideological groups expresses that individuals from ideological groups who are individuals from individuals' agent organizations can be excused assuming that they abuse regulations and guidelines, which has been obliged by Article 85 section (2) letter d and letter e Regulation Number 22 of 2003, the power to excuse it is the power of the DPR administration as specified in Article 85 passage (3) of Regulation Number 22 of 2003, and not the power of ideological groups
3. Whereas based on the above arguments it is clear and unequivocal that the provision which states "Members of the DPR stop temporarily because: c. proposed by the political party concerned" in Article 85 section (1) letter c of Regulation Number 22 of 2003 concerning Susduk and Article 12 letter b of Regulation Number 31 of 2002 concerning Ideological groups is an immense excusal standard, namely giving subjective rights to political parties and party administrators who can give rise to the arbitrariness of political parties towards their members who are members of the DPR but who are not in line or have different opinions in conveying or voicing the aspirations of constituents or the electorate, can even occur because of the likes and dislikes

of the political party management towards its members who become a member of the DPR because of acting/ being vocal and/or trying to reveal bad things that touch the personality of the Management of the Political Party in question;

4. Whereas the arrangements of Article 85 passage (1) letter c of Regulation Number 22 of 2003 and Article 12 letter b of Regulation Number 31 of 2002 concerning Ideological groups will additionally appear into an activity that is contrary to the standards of a majority rules system, limiting the rights of DPR members in gives moral and political accountability to constituents and castrates their political rights in carrying out the duties entrusted by their constituents, and violates the principle of legal certainty.

***As for the applicant's argument, the government is of the opposite opinion, namely:***

1. That the presence of ideological groups in Indonesia should be founded on the arrangements of Regulation Number 31 of 2002 concerning Ideological groups, starting from the terms of establishment, rights, and obligations to membership and sovereignty of members of political parties. Thus a citizen who elects and joins (let alone becomes an administrator) a certain political party then voluntarily submits himself, is bound by and approves the statutes and bylaws (AD/ART) of the political party concerned (vide Article 10 and Article 11 Law Number 31 of 2002 concerning Political Parties);
2. Whereas every DPR member, even though he is directly elected by his voters (constituents) in his constituency, his candidacy is proposed by a certain political party, and the legislative candidate is a member of a political party, in other words "without a political party someone cannot become a member of the DPR". Besides that, each member of the DPR is incorporated in a "Faction" which is a representation of the existence of political parties in the DPR;
3. in the setting of maintaining the power and uprightness of ideological groups, ideological groups can propose to the authority of the DPR to excuse (review) individuals from ideological groups who are individuals from the DPR, because they are deemed to have violated the statutes and bylaws (AD/ART) of political parties (Article 12 letter b of Law Number 31 of 2002 junction Article 85 paragraph (1) letter c of Law Number 22 of 2003);
4. Whereas the proposition to excuse an individual from an ideological group who is an individual from the DPR was not completed with no obvious end goal in mind, in light of the fact that before the proposition for excusal as an individual from the DPR by the ideological group concerned or the excusal cycle by the initiative of the DPR, the person concerned was given the right to defend himself, this was meant to prevent the tyranny and arbitrariness of

political parties in recalling their members from membership in the DPR. The recall institution is also not intended for unlimited domination of political parties (tyranny of political parties) but must be placed within the framework of proportionality and objectivity according to the provisions of the applicable laws. The review organization plans to regulate (control) individuals from ideological groups who are individuals from the DPR, which thus is supposed to work on the presentation, responsibility, and uprightness of the individuals from the DPR themselves.

### ***Decision of the Constitutional Court Regarding the Judicial Review of the Right to Recall***

The change in recall arrangements occurred when the general election was about to enter in 2004. The 2003 political package law, specifically Regulation no. 31 of 2002 concerning Ideological groups, Guideline no. 22 of 2003 concerning the Association and Position of the MPR, DPR, DPD, and DPRD, as well as Regulation no. 13 of 2003 concerning General Races for Individuals from the DPR, DPD, and DPRD controls the request for this review. The recall system in the Susduk Law is known as an interim replacement (PAW). Even though the meaning of recall is not the same as the meaning of interim replacement, however, intertemporal replacement includes recall.

It was explained that when the norms of Article 12 letter of Law Number 31 of 2002 were enacted in conjunction with Article 85 paragraph (1) letter c of Law Number 22 of 2003, at that time the members of the DPR were overwhelmed with anxiety because there was a case where a member of a political party was dismissed, but could not be recalled at that time, while there were demands from the public that they wanted members of the MPR, DPR, DPD, and DPRD to be accountable to the people. Members of the DPR who are deemed to be less committed or to have violated the constitution, statutes, and bylaws of each member of a political party must go through a process of examination and verification regarding alleged violations or obligations imposed by members of the party, in general, parties have an Honors Board. This shows that termination as a member of a political party that causes a recall as stipulated by law or a change of time, cannot be done arbitrarily and of course must go through the corridors of the law.

The Protected Court in its choice Number 008/PUU-IV/2006 which was perused out on 21 September 2006 chose to dismiss the candidate's all's applications. Concerning the lawful contemplations of the board of judges, expressing that overall races are held like clockwork doesn't actually intend that during those five years, it is unimaginable to totally supplant individuals from the DPR, DPD, DPRD, as well as the president and VP who are chosen in the overall political decision. Albeit the president and VP are chosen for a five-year term, the

1945 Constitution likewise specifies conditions and methods that open up the likelihood that a president as well as VP might leave before their term of office closes, as specified in Article 7B and Article 7C of the Constitution. 1945. Article 22B of the 1945 Constitution it is expressed that individuals from the DPR can be excused from office, the terms and methodology of which are directed by regulation.

The Sacred Court is additionally of the assessment that the presence of Article 85 section (1) letter c of the Susduk Regulation, and Article 12 letter b of the Ideological group Regulation doesn't dispense with the privileges of each and every individual as ensured by Article 28C passage (2) of the 1945 Constitution. The option to battle aggregately for building society, the country, and the state isn't deciphered as the appropriate for everybody to become individuals from the DPR or keep on becoming individuals from the DPR. The DPR is a group's delegate foundation in the sacred framework laid out by the 1945 Constitution. If Article 28C passage (2) of the 1945 Constitution is deciphered as the option to turn into an individual from the DPR it will limit the significance of Article 28C section (2) since this right is just claimed by a couple of individuals, specifically just a few DPR individuals. Article 28C section (2) is expected to give everybody the right to uninhibitedly along with others (on the whole) to foster society, country, and state. In this manner the contention of the candidate expressing that Article 85 section (1) letter c of the Susduk Regulation and Article 12 letter b of the Ideological group Regulation is in opposition to Article 28C passage (2) of the 1945 Constitution is unfounded on the grounds that the candidate has not lost his entitlement to propel himself in battling for his privileges all in all to assemble the local area, country, and state ensured by Article 28C section (2) of the 1945 Constitution.

The Constitutional Court is also of the opinion that the recall right is essentially not contrary to democracy but is instead intended to maintain a relationship between the represented and the represented. In the act of delegate a majority rule government, different varieties of review freedoms utilizations can happen. It doesn't mean dispensing with the significance of a delegate a majority rules government framework. Assuming by and by there is a deviation from the use of the review right, then this isn't a situation mistake so not the framework must be forfeited, yet the training that should be revised. Article 12 letter b of the Ideological group Regulation isn't an arrangement that remains solitary. This arrangement is connected with different arrangements of the Ideological group Regulation itself, specifically the arrangements administering the privileges of ideological groups, as specified in Article 8 of the Ideological group Regulation which, in addition to other things, expresses that ideological groups reserve the option to propose the break substitution of their individuals in individuals' agent establishments by legal guidelines (vide Article 8 letter f of

the Ideological group Regulation) and has the option to excuse its individuals in individuals' delegate organizations by legal guidelines (vide Article 8 letter g of the Ideological group Regulation). The introduction of the privileges of such ideological groups is an outcome of the necessity to "support the rules and ordinances of the party" for each resident who wishes to turn into an individual from an ideological group [vide Article 10 section (2) of the Ideological group Law]. Thusly, when a resident has turned into an individual from an ideological group - and that implies that the individual concerned has acknowledged the condition "endorse the party's rules and ordinances" as alluded to in Article 10 passage (2) of the Ideological group Regulation - then As a result, the law then forces a commitment on the individual worried to follow the party's resolutions and ordinances.

#### **4. Conclusion**

The change in recall arrangements occurred when the general election was about to enter in 2004. The 2003 political package law, namely Law no. 31 of 2002 concerning Political Parties, Law no. 22 of 2003 concerning the Composition and Position of the MPR, DPR, DPD, and DPRD, as well as Law no. 13 of 2003 concerning General Elections for Members of the DPR, DPD, and DPRD regulates the order of this recall. The recall system in the Susduk Law is known as an interim replacement (PAW). Even though the meaning of recall is not the same as the meaning of interim replacement, however, intertemporal replacement includes the recall.

The Established Court expects that the presence of Article 85 section (1) letter c of the Susduk Regulation, and Article 12 letter b of the Ideological group Regulation doesn't wipe out the privileges of each and every individual as ensured by Article 28C passage (2) of the 1945 Constitution. The right to fight collectively for community development, nation, and state is not construed as the people's right to become the DPR or continue to become members of the DPR. The DPR is a group's delegate organization in the protected framework laid out by the 1945 Constitution. In the event that Article 28C section (2) of the 1945 Constitution is deciphered as the option to turn into an individual from the DPR it will limit the importance of Article 28C passage (2) since this right is just claimed by a couple of individuals, specifically just a few DPR individuals. Article 28C section (2) is expected to give everybody the right to unreservedly along with others (aggregately) to foster society, country, and state. In this manner the contention of the candidate expressing that Article 85 passage (1) letter c of the Susduk Regulation and Article 12 letter b of the Ideological group Regulation is in opposition to Article 28C section (2) of the 1945 Constitution is unfounded on the grounds that the candidate has not lost his entitlement to propel himself in battling for his privileges all in all to fabricate the local area, country, and state ensured by Article 28C section (2) of the 1945 Constitution.

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