



## Public Authority in Interim Replacement of Members of the House of Representatives

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### Abstract

*The House of Representatives is a people's representative institution or legislative body. Membership of the House of Representatives, both at the central and regional levels, can be replaced with other members through a mechanism, namely Interim Replacement. The purpose of interim replacement is to maximize the performance of legislators effectively and efficiently. However, there is a problem, namely the replacement of members of the legislature in the middle of their term of office. This study aims to analyze the mechanism of interim replacement of members of the House of Representatives and how the involvement of voters in the intertime replacement mechanism. This research is normative juridical research using secondary data as the primary data in the form of legislation, research results, and journals. Based on the research results, the interim replacement mechanism does not involve the public, namely voters. Disputes between members of the legislature and the supporting party cannot be avoided due to the inappropriate process of implementing the mechanism. It is necessary to improve the mechanism for the Interim Replacement of members of the House of Representatives, which is not only the authority of political parties but also the public authority, namely the constituent voters.*

*Keywords: Public Authority, Interim Replacement, Representative*

### Abstrak

*Dewan Perwakilan Rakyat merupakan lembaga perwakilan rakyat atau lembaga legislative. Keanggotaan lembaga Dewan Perwakilan Rakyat baik di tingkat pusat maupun daerah dapat diganti kedudukannya dengan anggota lain melalui mekanisme yaitu Penggantian Antar Waktu. Tujuan dari Penggantian antar waktu adalah memaksimalkan kinerja anggota legislatif secara efektif dan efisien. Namun ada permasalahan yaitu penggantian anggota legislatif di tengah masa jabatannya. Penelitian ini bertujuan menganalisis mekanisme penggantian antar waktu anggota Dewan Perwakilan Rakyat dan bagaimanakan keterlibatan pemilih dalam mekanisme penggantian antar waktu. Penelitian ini adalah penelitian yuridis normatif dengan menggunakan data sekunder sebagai data pokok berupa peraturan perundang-undangan, hasil penelitian dan jurnal. Berdasarkan hasil penelitian mekanisme penggantian antar waktu tidak melibatkan publik yaitu pemilih. Sengketa antara anggota legislatif dan partai pengusung tidak dapat dihindarkan akibat proses yang tidak tepat dalam melaksanakan mekanismenya. Diperlukan penyempurnaan mekanisme Penggantian Antar Waktu anggota Dewan Perwakilan Rakyat dimana bukan hanya otoritas partai politik tetapi juga otoritas publik yaitu konstituen pemilih.*

*Kata Kunci: Otoritas Publik, Penggantian Antar Waktu, Perwakilan*

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## I. Introduction

Indonesia, as a country that adheres to the notion of democracy, at least several things are absolute, namely requiring general elections, rotation or regeneration of national leadership, independent judicial power, representation of people's sovereignty through solid and independent parliamentary institutions, respect and guarantee of human rights. Human beings, as well as the constitution that guarantees these things work.<sup>1</sup> Amendments to the 1945 Constitution of the Republic of Indonesia brought significant changes in Indonesia's social, political, and legal fields. This change has implications for the development of the implementation of democracy in Indonesia, which is marked by direct elections to elect the President and Vice President, direct elections to elect members of the legislature, or, most recently, the existence of independent candidates in the general election for regional heads

<sup>1</sup> Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama (cetakan ke-14, 1992), 60.

and deputy regional heads. Political parties in a democratic country are pillars of democracy or the implementation of popular sovereignty. Political parties have a central and essential status and role in every democratic system because they play an essential role as a liaison between the state government and its citizens.<sup>2</sup>

Political parties are pillars of democracy, and if the people no longer trust this pillar, then it is a severe threat to the sustainability of democracy in Indonesia. Returning political parties on the right track in the current democratization is a shared responsibility. Political parties are not just organizations where politicians gather but can also carry out their functions to benefit the community. In a democratic system, parties play a significant role. The general election is one way to determine representatives who will sit in the people's representative body. Being a political representative within the framework of a democratic system carries a relatively significant burden and responsibility and political consequences. In addition to legal entanglements due to violations of statutory regulations that can be materially proven in a general court, council members face challenges being sued politically both by their parent political parties and constituents and society in general.<sup>3</sup>

In practice, Indonesia tends to adopt a diversified model in which members of the House of Representatives are representatives of political parties. That means that members of the House of Representatives must represent the interests of political parties and voice the voices of political parties. The existence of a system or mechanism for Interim Replacement used by political parties against members of the People's Representative Council who come from the political party concerned strengthens this. The Interim Replacement Mechanism (recall right) that can replace elected Council Members with new Members creates problems. Members of the House of Representatives have conflicts between being representatives of the people or representatives of political parties caused of the culture of the Indonesian political system.<sup>4</sup>

Although Interim Replacement (recall rights) is common, it is not uncommon if it is used for particular interests, such as the interests of political parties or the personal interests of their cadres, or the interests of the election organizers themselves by taking advantage of circumstances to gain the advantage, especially if accompanied by juridical reasons to justify this. For example, Harun Masiku, a cadre of the winners of the 2019 PDI-P Legislative Election and wanted to use the Interim Replacement Mechanism to become a Member of the DPR, replacing Nazarudin Kiemas, who died with the Electoral District of South Sumatra One. Even though, when viewed from the vote, Harun Masiku was only in the bottom third with 5870 votes, quite far from the late Nazarudin, who got 145,752 votes. Meanwhile, the second-most votes in the same electoral district were Rizki Aprilia, with 44,402 votes. To help determine his appointment as an Interim Replacement House of Representatives (*Dewan Perwakilan Rakyat*, DPR) Member, Harun Masiku bribed the KPU commissioner as operational funds<sup>5</sup>.

In this case, the General Elections Commission and PDI-P have different interpretations regarding the Interim Substitute in which the PDI-P is taking an active course in the judicial review of General Election Commission Regulation No. 3 of 2019 concerning voting in the General Election where the application was officially submitted on June 24, 2019, which was wrong. One of the contents of the petition is that in the recapitulation of votes, the party has the authority to determine which candidates are entitled to transfer votes from candidates who have died because the control of the nomination is in the hands of the political parties participating in the election. On July 19, 2019, the Supreme Court Issued Decision No. 57 P/HUM/2019, which contains the provisions: Determination of the votes for legislative

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<sup>2</sup> Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta, BIP, 2007), 710.

<sup>3</sup> Sebastian Salang, *Menghindari Jeratan Hukum Bagi Anggota Dewan* (Jakarta: PT. Penebar Swadaya, 2009), 269.

<sup>4</sup> Rida Farida, "Mekanisme Penggantian Antar Waktu (PAW) Anggota DPR Dan Implikasinya Dalam Konsep Perwakilan Rakyat," *Jurnal Cita Hukum*, 1,2 (2013).

<sup>5</sup> KPU Ungkap Kronologi Permohonan PAW Harun Masiku di Kasus Suap Wahyu Setiawan Available on <https://news.detik.com/berita/d-4854771/kpu-ungkap-kronologi-permohonan-paw-harun-masiku-di-kasus-suap-wahyu-setiawan>, (Accessed March 20, 2020)

candidates who have died, their authority was left to the leadership of political parties to be given the legislative candidates who are considered the best ".

After getting the green light from the Supreme Court with the decision, the DPP PDI-P then gave a letter to the KPU on August 5, 2019, with the signature of the Secretary-General of the PDI-P, asking the KPU to implement the decision, the DPP PDI-P asked for Nazarudin Keimas' vote to be transferred to Harun Masiku. On September 13, 2019, the PDI-P again gave a letter with the same content as the first request, which asked the KPU to transfer Nazarudin Keimas' vote to Must Masiku. On December 5, 2019, for the third time with the same tone but in the form of an application for the Interim Replacement of Rizki Aprilia with Harun Masiku.

However, the General Election Commission rejected all PDI-Perjuangan applications and still determined the second most votes winner Rizki Aprilia as a replacement for Nazarudin, based on the Election Law No. 7 of 2017, namely: Elected candidates for members of DPR, Provincial DPRD, and Regency/City DPRD as referred to in paragraph (1) in paragraph (1) shall be replaced by KPU, Provincial KPU, and Regency/Municipal KPU with candidates from the final list of candidates for political parties participating in the same election in the electoral district based on the votes of the following most prominent candidate. According to the General Elections Commission, the Supreme Court's decision contradicts Law No. 7 of 2017 concerning General Elections, so the General Election Commission chose to ignore the Supreme Court's decision even though the Supreme Court's decision is final and binding. In its decision, the General Election Commission adheres to the law because, based on Law No. 12 of 2011, the hierarchy of the Act is under the Basic Law. According to the General Elections Commission, the legal standing of the Act is higher than the Supreme Court's Decision.

In addition, the replacement of members of representatives from the supporting parties with their cadres is a right that will result in the House of Representatives being limited to carrying out the people's mandate.<sup>6</sup> Percentage based on the 2014-2019 Legislative data version of the General Election Commission, 22% of members of the House of Representatives have Interim Replacement status, which means that many members of the House of Representatives are alternated without a direct election process. Disputes between members of the House of Representatives who are replaced from time to time by political parties are also not uncommon, both at the central and regional levels of the DPR.

## II. Research Problems

1. What is the mechanism for the Interim Replacement of Members of the House of Representatives in the middle of their term of office by Political Parties?
2. How should the involvement of voters be in the mechanism of Interim Replacement of Members of the House of Representatives?

## III. Research Methods

The method in this research is normative juridical. It will examine the rule of law as a foundation where various systems that are considered problematic become a legal event. This method aims to create a juridical argument to determine how a legal event is considered appropriate and how a juridical event should occur adequately. The type of data used in this study is secondary data. Secondary data is data obtained employing literature study to obtain data in the form of documents, literature, and scientific writings through a search for legislation, concepts, views, and legal principles related to the subject of writing supported by legal materials primary, secondary legal materials, tertiary legal materials as legal science.

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<sup>6</sup> Muhamad Aljebra Aliksan Rauf "Hak Recall Partai Politik Terhadap Status Keanggotaan Dewan Perwakilan Rakyat dalam Sistem Ketatanegaraan Indonesia," *Jurnal Magister Hukum Udayana* , 7, 4 (2018), 445. Tersedia di website : <https://ojs.unud.ac.id/index.php/jmhu/article/view/42775> (Accessed March 17, 2020)

This research is library research by going through a series of readings, taking notes, citing books, and using data based on the research objectives. Methods are arranged systematically, logically, and rationally. After the primary and secondary data in the form of documents are obtained ultimately, they are analyzed with regulations related to the problem being studied.<sup>7</sup>

#### IV. Research Results And Discussion

##### 1. Interim Replacement of Members of the House of Representatives in the Middle of their Term of Office by Political Parties

Interim replacement of DPR members is associated with the recall. Etymologically, the word recall in English contains several meanings. According to Peter Salim (in Contemporary English Indonesia), they are remembering, recalling, or canceling. Interim replacement is defined as the process of withdrawing or replacing members of the DPR by the parent organization, namely a political party<sup>8</sup>. Recall consists of the word "re," which means to return, and "call," which means to call or call. If these words are put together, the word recall will mean calling or calling back. The right of interim replacement is defined by several experts, one of them by Mh. Isnaeni said: The right to alternate between times is generally a "sword of Damocles" for each member of the DPR. With the recall right, DPR members will be waiting for more instructions and guidelines from their faction leaders rather than auto-activating. According to BN, doing high octo-activities without the approval of the faction leader is likely to make a fatal mistake that can result in recalls. Marbun, recall is a right to replace members of the DPR by the parent organization.<sup>9</sup>

The right of interim replacement or recall is regulated in Law No. 17 of 2014 concerning the MPR, DPR, DPD, and DPRD. Before the interim replacement is applied, there must be an official who resigns or is replaced. The decision to change the time of the DPR members entirely depends on the political party that carries it, where the interim replacement is to function as a control mechanism of the political party that has its representatives sitting as members of Parliament. There is no problem if the recall right is in the hands of a political party as long as the replacement of DPR members is under the terms and conditions as clearly regulated in Article 239, paragraph (1) and paragraph (2) and is carried out objectively and based on clear, concrete and concrete parameters. Not multiple interpretations. However, the facts that occur in the state dynamics are clear that the recall carried out by political parties is thick with political content.<sup>10</sup>

For example, the National Awakening Party finally decided to withdraw its political party members from members of the House of Representatives, namely Lily Wahid and Efendy Choiri, who were affected by their political stance, due to differences in opinion during the decision on the proposed tax inquiry right. The decision to recall the two cadres of Partai Kebangkitan Bangsa (PKB) is thick with political nuances, namely securing the PKB of the SBY-Boediono government coalition. It was proven after that President SBY immediately praised the consistency and loyalty of PKB in supporting government policies.<sup>11</sup>

Recalls by political parties harm the country's political life. Negative values that can arise include; First, curb and bind the reasoning of members of the DPR who are critical and want to voice their constituents' voices. Second, it forms the mentality of DPR members to be afraid of their parent organization (political parties), which can cause DPR members to

<sup>7</sup> A.A. Ngurah Agung Putra, A.A. Istri Ari Atu, *Pengaturan Tentang Penggantian Antar Waktu (PAW) Pada Anggota Lembaga Perwakilan Republik Indonesia* (Bali: Universitas Udayana, 2019).

<sup>8</sup> BN. Marbun, *Kamus Hukum Indonesia* (Jakarta: Pustaka Sinar Harapan, 2006), 417, 38.

<sup>9</sup> BN. Marbun, *Kamus Politik* (Jakarta: Sinar Harapan, 1996), 43.

<sup>10</sup> Nike K. Rumokoy, "Kajian Yuridis Tentang Hak Recall Partai Politik Politik Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum Unsrat* 20,1 (2012).

<sup>11</sup> Lily Wahid dan Gus Choi Resmi Didepak dari DPR.. Available on: <http://news.okezone.com/read/2011/03/14/339/434738/lily-wahid-dan-gus-choi-resmi-didepak-dari-dpr>. (Accessed March 24, 2020).

prioritize and prioritize the interests of their political parties, no longer voicing the aspirations of their constituents. Based on several other reasons, the recall of political parties will shift the sovereignty of the people to the sovereignty of political parties and injure the rights of constituents who have elected their people's representatives to sit as members of Parliament, which is highly expected to bring their aspirations to be fought for.<sup>12</sup>

In an accurate democratic system, the "party recall" system should be abolished and replaced with a "constituent recall" system. A People's Representative Council member may not be dismissed from his position as a representative of the people, except if the person concerned violates the law, violates the code of ethics, resigns, or dies during office. A member of the People's Legislative Assembly may not be dismissed from his position by being withdrawn or recalled by the leadership of his political party for reasons of a different opinion from the leadership of his party or for other reasons that are contrary to the principle of people's sovereignty which has elected him. Moreover, the appointment of a member of the DPR has been carried out on the principle of majority vote since the decision of the Constitutional Court. Therefore, people's aspirations should not be suppressed just because the people's representatives have different opinions from the party leadership.<sup>13</sup>

## **2. Involvement of Voters in the mechanism of Interim Replacement of Members of the House of Representatives**

To implement the principles of people's sovereignty and democracy, the people should be involved in this recall mechanism. If the people as holders of sovereignty have the right to choose who their representatives are, then voters should also have the right to dismiss or propose the dismissal of a member of the DPR/DPRD. According to LIPI Political Observer Syamsuddin Haris, the mechanism for recalling or replacing time between DPR members needs to be changed. PAW should be the authority of political parties and public authority that is a constituent of DPR members. If it is only from a political party, then PAW is vulnerable to being misused. Dismissal can be done based on likes and dislikes. Therefore, the public needs to be involved in the PAW process. Constituents have the right to control their representatives. If the people's representatives do not work under the people's mandate, then the constituents or the public can take the initiative to recall the PAW concerned. The mechanism varies. It can be by using a limited referendum or petition signed by several constituents. Thus, the legitimacy of recall and PAW is not only from political parties but also from the public.<sup>14</sup>

Under the current Indonesian constitution, the recall mechanism is to provide more space for constituents as sovereign holders. There are several options regarding using recall rights against members of the DPR. First, utilizing impeachment or impeachment with the procedure or mechanism to carry out re-election with the content or content of the election is a recall or not against members of Parliament. They are considered no longer capable of carrying out their duties, which can be carried out by collecting voter signatures, photocopies of Identity Cards, and adjusted to the divisor of the selector.<sup>15</sup> Second, in the United States, recall is carried out by collecting signatures from Senators to reach an agreement to replace Senators who are considered incompetent to carry out their duties as members of Parliament, who are then accounted for the results of the collection of signatures and brought to the Honorary Board. The first solution is called the right of recall by the constituents or Constituent Recall, while the second solution uses parliamentary equipment, namely the Honorary Body. The two models above can be applied in Indonesia under the considerations

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<sup>12</sup> Nike K. Rumokoy, "Kajian Yuridis Tentang Hak Recall Partai Politik Politik Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum Unsrat* 20,1 (2012).

<sup>13</sup> Jimly Asshiddiqe, "Partai Politik dan Pemilihan Umum Sebagai Instrument Demokrasi," *Jurnal* 3,4 (2006): 17.

<sup>14</sup> Al Muttaqien, "Implikasi Penggantian Antar Waktu (PAW) Anggota DPR/DPRD Oleh Partai Politik Terhadap Demokrasi," (*JSH Jurnal Sosial Humaniora*, Universitas Jabal Ghafur 3,1 (2020).

<sup>15</sup> Nike K. Rumokoy, "Kajian Yuridis Tentang Hak Recall Partai Politik Politik Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum Unsrat* 20,1 (2012).

and assessments that are considered feasible. Members of the DPR are a form of political representation, so the recall of members of the DPR must be based on a suitable mechanism, clearly based on considerations and parameters that do not have multiple interpretations, which in the first place does not ignore the values of people's sovereignty.<sup>16</sup>

## V. Conclusions

1. Interim replacement serves as a control mechanism for political parties with representatives who sit as members of Parliament. There is no problem if the recall right is in the hands of a political party as long as the replacement of DPR members is under the terms and conditions stipulated in Article 239, paragraph (1) and paragraph (2) and is carried out objectively and based on clear, concrete parameters and not multiple interpretations. However, political parties carried out recalls were thick with political content. The recall mechanism by political parties harms the political life of this country. First, it curbs and binds the reasoning of members of the DPR who are critical and want to voice their constituents' voices. Secondly, it forms the mentality of DPR members to be afraid of political parties, which can cause DPR members to prioritize and prioritize the interests of their political parties, no longer voicing the aspirations of their constituents. The recall of political parties will shift the sovereignty of the people to the sovereignty of political parties and injure constituents' rights. The "party recall" system should be abolished and replaced with a "constituent recall" system. A member of the DPR may not be dismissed from his position as a representative of the people unless the person concerned violates the law, violates the code of ethics, resigns, or dies during his term of office. A house of representatives member may not be dismissed from his position by being withdrawn or recalled by the leadership of his political party for reasons of a different opinion from the leadership of his party or for other reasons that are contrary to the principle of sovereignty of the people who have elected him.
2. The recall mechanism does not reflect the principles of popular sovereignty and democracy. As the holder of sovereignty, the people have the right to choose who their representatives are. Voters also have the right to dismiss or at least propose the dismissal of a member of the DPR/DPRD. Interim replacement should be the authority of political parties and public authority that is a constituent member of the House of Representatives. The public needs to be involved in the Interim Replacement process, and constituents have the right to control their representatives by providing more space for constituents as holders of sovereignty.

## VI. Suggestions

1. There needs to be a change in the mechanism for the Interim Replacement of members of the House of Representatives/Regional People's Representative Council, where it is the authority of political parties and the public authorities, namely the constituents.
2. The public needs to be given the right to control their representatives in Parliament. If it does not work optimally or is not under the people's mandate, the Interim Replacement mechanism, inserted with a limited referendum or can be called a petition signed by some constituents, will become legitimacy not only from political parties but also from the public.

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<sup>16</sup> *Ibid*, hlm.6.

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