Consolidating Role of Law Between Political Party and Their Underbouw Organization

Muhammad Ali, Ibnu Sina Chandranegara, Andisa Sekarani Wibowo
University of Muhammadiyah Jakarta, Jakarta, Indonesia

In Article 12 Point J of Act Number 2 of 2008 concerning political parties, a political party has the right to form and have a Political Party Underbouw Organization. However, there has not been a further or a specific Political Party Underbouw Organization regulation both in the elucidation of the act and the implementation regulations of the act. This study has the main objective to find the legal status of the Political Party Underbouw Organization in Indonesia. This research is a normative juridical research. This study concluded that the legal status of the Political Party Underbouw Organization can be regulated as a public legal entity which is a part of the political party or an independent legal entity. We strongly suggest the regulation of the Political Party Underbouw Organization must be specified as a chapter in the Political Parties Act or perhaps as a new act.

Keywords: Political Party Underbouw Organization, political party, public legal entity

Introduction

It is very common for a democratic country to provide a forum or space for the people to express their opinions and aspirations. Freedom of association, assembly, and freedom of speech are basic features of a democratic country. Besides, people were given the right to actively participate in politics and government, for example, becoming members of the House of Representatives (known as DPR). Unlike the case with members of the Regional Representative Council (known as DPD), to nominate themselves as members of the House of the Representatives and House of the Regional Representatives, they are required to be a member of a political party first. Therefore, political parties can be analogous as vehicles for those who want to use their rights to actively participate in government.

Political parties are a means to absorb and send out people’s aspirations in the life of the nation and state. Political parties also have status as pseudo-public institutions, where political parties are not government institutions or private institutions (Cipto, 2007). As a bridge to the aspirations of the people, political parties must have a systematic formation or structure, so that they can work effectively and efficiently, one of the ways is by forming a Political Party wing Organization or underbouw. Forming and owning a Political Party Underbouw Organization is a right for every political party, as stated in Act Number 2 of 2008 concerning political parties as
Amended by Act Number 2 of 2011. Unfortunately, the Political Party Underbouw Organization is only mentioned twice in Article 12 Point J along with the article elucidation in Act Number 2 of 2008.

In the elucidation of Article 12 point j of Act Number 2 of 2008, it is stated the Political Party Underbouw Organization is an organization formed by and/or declares itself as an Underbouw of a political party following the statutes and bylaws of each political party. This indicates that each political party has the authority to determine the construction of their Political Party Underbouw Organizations. As a result, there is no standard reference for political parties to form the Political Party Underbouw Organizations. In practice, the regulation of Political Party Underbouw Organization turns out refers to Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Act Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organization into law, whereas, the Political Party Underbouw Organization is actually an extension of the political party in carrying out its duties, functions, and roles.

Hence, the actions carried out by the Political Party Underbouw Organization are vague. Who should be held accountable, if the Political Party Underbouw Organization carries out prohibited legal acts? Is the Political Party Underbouw Organization itself liable, because it is registered as a Community Organization? Conversely, the legal liability and sanction will be given to the political party, because the Political Party Underbouw Organization is part of a political party? Considering the role of Political Parties and Political Party Underbouw Organization, it is imperative for the state to determine the status and position of the Political Party Underbouw Organization. Because its status, form, and position determine the responsibility for all the actions, activities, and deeds they have done.

This journal intends to find out the legal status of Political Party Underbouw Organizations and which law forms the basis for Political Party Underbouw Organizations.

**Research Method**

This research is a legal research using a normative juridical approach. One of the uses of this legal research is to find out how the law regulates a matter and how the rule of law is applied. The normative approach is used to find out the legal status and practice of implementing Political Party Underbouw Organization in accordance with applicable legal provisions, both their formation and their activities. The data used are secondary data which includes legislation, names of Political Party Underbouw Organizations, and others.

**Study and Analysis**

**Defining Underbouw Organization of Political Party**

Subjectum juris can be classified as human (natuurlijke person) and association (vereniging). At the beginning, the legal subject that is recognized by the law is only human being (natuurlijke persoon), but along with time, unions of people were born. They had a common interest and were able to carry out legal actions, which then identified as association (vereniging). Rights and obligations are inherent in every subject of law, including

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1. Article 12 point j of Act Number 2 of 2008 concerning political parties (The State Gazette of the Republic of Indonesia Year 2008 Number 2, The Supplement of The State Gazette Number 4801).
2. Elucidation of Article 12 point j of Act Number 2 of 2008 concerning political parties (The State Gazette of the Republic of Indonesia Year 2008 Number 2, The Supplement of The State Gazette Number 4801).
association. According to E. Utrecht, a legal entity is a body which according to the law is in power or has the authority to be a sponsor of rights, who does not have a soul, or more precisely who is not human (Imayani, 2009). Article 1653 of the Civil Code stated, besides the existence of a true corporation (eigenlijke maatschap), four unions of people are also recognized as legal entities (vereenigingen van personen) called associations (zedelijkligchamen) (Hukum Online, 2012):

1. association established by public authority (Op openbaargezagingesteld);
2. recognized associations (erkend);
3. permitted associations as allowed (geoorloofd toegelaten);
4. association established for a particular purpose that are not contrary to law or decency (associations established by the private sector).

In terms of the making procedures, associations can be classified as legal and non-legal entities. A legal entity association is an association established by a notary deed and authorized by the Ministry of Law and Human Rights. Meanwhile, ordinary or non-legal entity associations are associations established with a notarial deed and are sufficiently registered with the Ministry of Home Affairs. Non-legal body associations are subject to Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Law Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organizations.

In this regard, the Political Party Underbouw Organization is an association but whether it is a legal entity or non-legal entity has never been regulated in statutory regulations. With a theoretical approach, there is one theory that can be rationalized in the regulation of Political Party Underbouw Organization. In organ theory, according to Otto von Gierke (1841-1921), a legal entity such as humans, the legal entity becomes a “verbandpersoblich keit” which is a body that transforms its will by means of the tools or organs of the body. For example, its members or management are like humans who say their will through their mouth or their hands if the will is written on paper. What they (organen) decide is the will of the legal entity.

According to organ theory, a legal entity is not an abstract thing but it really does exist. A legal entity is not a wealth of rights without subject matter, but it is a real organism. The goal of a legal entity is to become collectivity, irrespective of the individual. Legal entity is a “verband persönlichkeit” who has a gesamtwille. Each association or association of people is a legal entity. Since the quality of legal subjects in humans also cannot be captured by the five senses and act with not the unity of a person’s form, but by the acting of that person’s organs. Then legal entities are legal subjects.

Thus, the Political Party Underbouw Organization is an organ in an organ. It is still counted as a separate organ that has a management structure even though, according to the statutes and bylaws of the political party, it is still part of the political party. However, Political Party Underbouw Organization has its own manager, its own wealth, duties, authority, and its own interests. Hence, a special regulation is necessitated.

Role of Political Party

According to Carl J. Friedrich (1967), political party is

a group of human beings, stably organized with the objective of securing or maintaining for its leaders the control of a government, with the further objective of giving to members of the party, through such control ideal and material benefits and advantages. (p. 419)
Political party in the democratic political system functioned as the *representation in presence* and also *representation in idea* (Asshiddiqie, 2015, p. 207). Based on Article 1 Number 1 Act Number 2 of 2008 concerning political parties, political party is a national organization and founded by a group of Indonesian citizen willingly over the common will and ideals to fight for and defend the political interests of members, society, nation, and state, along maintaining the integrity of the Unitary Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. A political party is a tool to strengthen freedom of association, assembly, and freedom of expression as a bit of effort to create a strong national life in the Unitary State of the Republic of Indonesia which is independent, united, sovereign, righteous and prosperous, as well as democratic and based on the law.

A political party was established by a notary deed of political party establishment as a legal body; therefore, it is authorized by the Ministry of Law and Human Rights. A political party must have statutes and bylaws as a reference in the operation of the political party itself. According to Article 10 of Act Number 2 of 2008 concerning political parties, political parties’ purposes are divided into:

1. General purposes of political parties are:
   a. realizing the national ideals of the Indonesian people as referred to the Preamble of 1945 Constitution the Republic of Indonesia;
   b. maintain and preserve the integrity of the Unitary Republic of Indonesia;
   c. develop a democratic life based on Pancasila by upholding the sovereignty of the people in the Unitary State of the Republic of Indonesia;
   d. raise up prosperity for all Indonesian people.

2. Specific purposes of political parties are:
   a. increase the political participation of members and the community in the context of organizing political and governmental activities;
   b. fight for the ideals of political parties in the life of society, nation and state;
   c. build the ethics and political culture in the life of the community, nation, and state.

Accordingly, political parties indeed aim to realize the ideals of the nation by increasing active and passive political participation of the community. Based on Article 11 Verse (1) Act Number 2 of 2008 concerning political parties, the functions of the political parties are:

1. political education for members and the wider community to become Indonesian citizens who are aware of their rights and obligations in the life of society, nation and state;
2. the creation of a climate conducive to the unity and integrity of the Indonesian people for the welfare of society;
3. absorbing, gathering and channeling the political aspirations of the people in formulating and determining state policies;
4. political participation of Indonesian citizens;

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3 Article 1 Number 1 of Act Number 2 of 2008 concerning political parties (The State Gazette of the Republic of Indonesia Year 2008 Number 2, The Supplement of The State Gazette Number 4801).
4 Article 10 of Act Number 2 of 2008 concerning political parties (The State Gazette of the Republic of Indonesia Year 2008 Number 2, The Supplement of The State Gazette Number 4801).
e. political recruitment in the process of filling political positions through democratic mechanisms with due regard to gender equality and justice.

Broadly speaking, Kristina Weissenbach (2010) divided the roles and functions of parties in three different domains, namely: (1) political party functions in general elections; (2) the function of political parties as organizations; and (3) the function of political parties in government. It can be seen that political parties have several functions, namely as a means of political education, political articulation, political communication, political socialization, political aggregation, and recruitment. Thus political parties influence the political system for the achievement of a democratic state and Indonesian citizens will have awareness in political life (Abdulhadi, 2019).

The Political Parties Act also installed the rights and obligations to the political party, as stated in Article 11 and Article 12 Act Number 2 of 2008 concerning political parties. For a political party to work productively, effectively, and efficiently, institutionalization is needed, so that it is not only becoming a political crowd. According to the Big Indonesian Dictionary, institutionalization is the process, method, or action of institutionalizing. The institutionalization of political parties is defined as a process in which parties become established in terms of integrated patterns of behavior, attitudes, and culture (Badan Pengembangan dan Pembaruan Bahasa, 2008). The most advanced concept and measurement framework on the institutionalization of political parties was developed by Kristina Weissenbach. Kristina (2010) developed the criteria for the institutionalization of political parties with a combination of the following seven dimensions: organization, inner party democracy/internal party democracy, program, autonomy, roots in society, coherence, and local and regional integration. Here is the following explanation for the seven dimensions mentioned above:

1. **Organization.** There are administrators of the organization who work regularly on all levels of the organization for the interests of the political party.

2. **Inner party democracy/internal party democracy.** The internal decision making process uses **bottom-up** mechanism. Where the political party decisions always consider the aspirations of its members and the policies are coordinated by the leader and all members among all levels.

3. **Program.** Political party must make policies and programs that match with its ideology.

4. **Autonomy.** Political party is capable to put itself independently between the individuals and social groups outside the political party.

5. **Roots in society.** The political party arose deeply rooted in society and gained stable support.

6. **Coherence.** Coherence between political parties and other public organizations.

7. **Local and regional integration.** The political party cooperates with the regional and local political parties or public benefit-based organization.

One of the ways to institutionalize political parties is by forming a Political Party *Underbouw* Organization. The forming of Political Party *Underbouw* Organization is a right for every political party as stated in Article 12 Point J Act Number 2 of 2008 concerning political parties. Political Party *Underbouw* Organization is basically an extension of the political parties in carrying out its duties, functions, and roles.

**Consolidating Role of Law Between Political Party and Their *Underbouw* Organization**

Political Party *Underbouw* Organization has a very crucial role in the process of recruitment and regeneration of members of the political party, mass mobilization for electoral interest, and to help absorb
people’s aspirations and to socialize the political party that surround them. Forming a Political Party *Underbouw* Organization is a right for every political party. Therefore, a political party could separate or distribute its task for recruitment and regeneration to every Political Party *Underbouw* Organization. The Political Party *Underbouw* Organizations contributes greatly to their political party in the implementation, socialization, and dissemination of their political party policies and programs (Haris, 2016). Political Party *Underbouw* Organizations are also often used to socialize political party ideology and policy, so that people can get to know them and easily find a political party that suits them.

The Political Party *Underbouw* Organization was formed to manage certain fields, for example, *Tunas Indonesia Raya* (TIDAR) which is formed by *Gerindra Party* to handle youth affairs, *Kesatuan Perempuan Partai Golkar* (KPPG) which is formed by *Golongan Karya Party* and handling women empowerment affairs, and *Ikhwanul Mubaligh* which is formed by Partai Demokrat to handle Islamic religious affairs. The fields which are mostly managed by Political Party *Underbouw* Organization are youth affairs, women empowerment affairs, religious affairs, professional affairs, student affairs, etcetera. Hence, Political Party *Underbouw* Organizations play the role of the segments of society representatives. But unfortunately, Political Party *Underbouw* Organization does not have a distinct regulation, either in the Political Parties Act or in other laws.

Political Party *Underbouw* Organization should be seen as a vessel to fulfill the freedom of association and assembly that cannot be limited only by statutes and bylaws of each political party. Some political parties with their initiative regulate it in their statutes and bylaws, but some other political parties do not implement the same thing. This phenomenon can be seen in Table 1.

Table 1

| No. | Name of the Political Party | Regulation in Their Statutes and Bylaws |
|-----|-----------------------------|-----------------------------------------|
| 1   | Partai Golongan Karya (Golkar) | Regulated                               |
| 2   | Partai Kebangkitan Bangsa (PKB) | Regulated                               |
| 3   | Partai Gerakan Indonesia Raya (Gerindra) | Regulated                         |
| 4   | Partai Demokrat | Regulated                               |
| 5   | Partai Hati Nurani Rakyat (Hanura) | Regulated                         |
| 6   | Partai Persatuan Indonesia (Perindo) | Regulated                         |
| 7   | Partai Gerakan Perubahan Indonesia (Garuda) | Regulated                         |
| 8   | Partai Berkarya | Regulated                               |
| 9   | Partai Solidaritas Indonesia (PSI) | Regulated                               |
| 10  | Partai Keadilan dan Persatuan Indonesia (PKPI) | Regulated                         |
| 11  | Partai Demokrasi Indonesia Perjuangan (PDIP) | Not mentioned (mentioned as institution) |
| 12  | Partai Persatuan Pembangunan (PPP) | Not mentioned (mentioned as autonomous agency) |
| 13  | Partai Bulan Bintang (PBB) | Not mentioned (mentioned as autonomous agency and special agency) |
| 14  | Partai Amanat Nasional (PAN) | Not mentioned (mentioned as institution and autonomous agency) |
| 15  | Partai Nasdem | Not mentioned (mentioned as institution and autonomous agency) |
| 16  | Partai Keadilan Sejahtera (PKS) | Not Regulated                       |

The inexistence of the definite regulation by the state is causing the political parties hesitant to regulate Political Party *Underbouw* Organization more detail in their internal rules (Mahardika, 2019). Institutionalization process of political parties will be inadequate as long the political parties still being a personal structure of the
leader (Ridha, 2016). Consequently, it is necessary to find the equilibrium between the interests of the political parties, the interests of the Political Party *Underbouw* Organization, and the interests of the public through a clear composition of regulations.

The legal side of the importance of regulation is to determine whether or not the Political Party *Underbouw* Organization can receive a commission from local government budget allocations, particularly by grants. So far, most of the Political Party *Underbouw* Organizations in the regions are routinely recipients of grants and tend to be the party’s “pocket money” for the sake of collecting public budgets (Abdulhadi, 2019, p. 9). Not only that, in Article 59 of Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Act Number 2 of 2017 concerning Amendments to Act Number 17 of 2013 regarding community organization into law, community organizations are also prohibited from collecting funds for political parties.

In practice, the regulation of Political Party *Underbouw* Organization often likened with community organization. Nevertheless, Moch. Nasim stated there are differences between those two as described in Table 2 (Nurhasim, 2019).

### Table 2

**Differences Between Political Party *Underbouw* Organization and Community Organization**

| Key points                  | Political Party *Underbouw* Organization                          | Community organization                           |
|-----------------------------|-------------------------------------------------------------------|--------------------------------------------------|
| Position                    | Under the political party (*underbouw*)                           | Independent and autonomous                        |
| Form                        | Not community organization                                        | Community organization                            |
| Relationship with political parties | Command—Political party as main organization                      | Separated—only a “voluntarily” on certain period  |
| Characteristic              | Public organization, not private, because they are part of political party | An organization for the sake of its own group     |
| Legal basis                 | Community Organizations Act or by authorities of Ministry of Home Affairs or other ministries | Community Organizations Act                      |
| Needs of the legal basis (legal entity) | Included in the substance of the regulation of the Political Parties Act—part of the organization of political parties. In fact, there are those who have a legal entity as a foundation or other legal entity. | “Depends”—some have legal entities—foundation, etc.; because some of them are profit oriented. |

Other than those in the table above, in Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Act Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organization into law, it is explicitly stated that community organizations are prohibited from using names, symbols, flags, or image markings that have similarities in principle or in whole with names, symbols, flags, or signs of other community organizations or political parties. In Article 59 verse (2) Point B Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Act Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organization into law, community organizations is prohibited from collecting funds for political parties.

Community organizations are not only on national scope, they can also just have local scope. The purpose of community organization is not political but more on participation in social development. In more specific matters, the functions of Political Party *Underbouw* Organization can also be a vessel to educate the society to have intellectual, emotional, and spiritual intelligence which are needed on critical thinking and public political
participation enhancement in democratic environment, to guide, assist, and advocate the society so that they have the courage to demand and uphold their political rights.

Likening a community organization with a Political Party Underbouw Organization is likewise as activating a time bomb, because the Political Party Underbouw Organization will initially identify themselves as community organizations that are not affiliated with political parties. When people put their trust in them, in the election season they will show their fangs and openly support certain political parties. Somehow they changed their function to be political parties marketing in gathering public supports. If the election season passes, they will return as community organizations, deactivating themselves, indeed, some will disperse. This is the overlapped regulation time bomb, community organizations will always be surrounded by political partisans, and then, they will get off track from their original goal. By the end of the day, the community organization will be created by a political party to collect public supports and not to its purpose as stated in the Community Organizations Act. People are fooled and their interests are also injured.

Not only that, this time bomb also applies to the political parties. This will become problematic if the Political Party Underbouw Organization does prohibit legal action and is not carried out in the interest of their political parties. Who should be held accountable? Is the Political Party Underbouw Organization itself liable because it is registered as a community organization? Conversely, the legal liability and sanction will be given to the political party because the Political Party Underbouw Organization is part of a political party?

Therefore, it is essential to regulate Political Party Underbouw Organization as a chapter in the Political Parties Act or perhaps as a new act, considering the close relationship and role of Political Party Underbouw Organization to the society, state, and the political parties that surround them.

Conclusion

Political parties are a means to absorb and send out people’s aspirations in the life of the nation and state. Political parties also have status as pseudo-public institutions, where political parties are not government institutions or private institution. As a bridge to the aspirations of the people, political parties must have a systematic formation or structure so that they can work effectively and efficiently, one of the ways is by forming a Political Party Underbouw Organization. Forming and owning a Political Party Underbouw Organization is a right for every political party, as stated in Act Number 2 of 2008 concerning political parties as amended by Act Number 2 of 2011.

Each political party has the authority to determine the construction of their Political Party Underbouw Organizations. Some political parties with their initiative regulate it in their statutes and bylaws, but some other political parties do not implement the same thing. As a result, there is no standard reference for political parties to form the Political Party Underbouw Organizations. In practice, the regulation of Political Party Underbouw Organization turns out refers to Act Number 16 of 2017 concerning the establishment of government Regulations

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5 Community organization is an organization established and formed by the people willingly based on the same aspirations, will, needs, interests, activities, and goals to participate in the development to achieve the goals of the Union Republic of Indonesia which follow Pancasila and 1945 Constitution of the Unitary Republic of Indonesia. On the other hand, political party a national organization and founded by a group of Indonesian citizen willingly over the common will and ideals to fight for and defend the political interests of members, society, nation, and state, along maintaining the integrity of the Unitary Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
in Lieu of Act Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organization into law, whereas, the Political Party Underbouw Organization is actually an extension of the political party in carrying out its duties, functions, and role. Political Party Underbouw Organizations play the role of the segments of society representatives, including women, youth, labor, etc.

However, Political Party Underbouw Organization is not vis a vis with community organization, in terms of position, form, characteristic, relationship with political parties, and other indicators. Some things are forbidden to be done by a community organization but can be done by the Political Party Underbouw Organization. Likening a community organization with a Political Party Underbouw Organization is likewise as activating a time bomb that can harm the society and the political parties. In which the people are unconsciously used as a political party mass, meanwhile they thought that organization is a community organization, whereas political parties can suddenly be held accountable for the actions of an organization that is not their Political Party Underbouw Organization. Therefore, to regulate Political Party Underbouw Organization using Act Number 16 of 2017 concerning the establishment of government regulations in Lieu of Act Number 2 of 2017 concerning amendments to Act Number 17 of 2013 regarding community organization into law is irrelevant.

**Recommendation**

The regulation on Political Party Underbouw Organization is still very limited. Therefore, diperlukan pengaturan secara khusus to avoid multi-interpretation that could leads to political system and political party complication. We suggest the regulation of the Political Party Underbouw Organization specified as a chapter in the upcoming amendments of Political Parties Act. Or perhaps the regulation can be carried out as a new act. The regulation should emphasize the legal status of Political Party Underbouw Organization and their relationships with the political party surround them.

Political Party Underbouw Organization must have been regulated as a legal entity which is a part of political party structure at the first place. Political Party Underbouw Organization must be reported to the Ministry of Law and Human Rights of the Republic of Indonesia, especially the Directorate General of Public Law Administration, starting from their functions, roles, and management structure, not to the Ministry of Home Affairs that is handling community organizations. This aims to guarantee legal certainty related to the Political Party Underbouw Organization, whether it is a community organization or part of a political party. If it is called a community organization, the Political Party Underbouw Organization is subject to the Political Party’s Central Board. This is what makes the identity of the Political Party Underbouw Organization vague. The Political Party Underbouw Organization carries out activities that are nothing but the interests of political parties.

Recommendation related to the regulation of Political Party Underbouw Organization includes: Regulation on the mechanisms and procedures to form a political party. The purposes and functions of the organization include: rights, obligations, funding, membership requirements, and management.

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