

CHAPTER FOUR

FINDING AND ANALYSIS

A. Settlement Mechanism of Intra Party Conflict of Political Parties

1. Intra Party Conflict Settlement based on Political Party Act

a. Before the Enactment of Political Party Act

Although political parties have existed since colonialization times, there is no regulation about intra party conflict settlement of political parties.¹ Since there is no regulation about the settlement of internal party conflict, when the parties feel unsatisfied by the decision of the political parties they will be bring the case to the district court. The legal basis on proposing the conflict entering into the court is Article 1365 of Civil Code.² The provisions of Article 1365 of Civil Code as the basis of the law to file a lawsuit for dispute of political parties is "Every illegitimate act, which causes damage to third parties obliges the party at fault to pay the damage caused" In

¹Whether in the Maklumat X Vice President Muhammad Hatta 1945 (RI News years I No. 1 page 3 column 4) enacted in Jakarta, 20 October 1945 by Pekerdja Agency National Committee, Law No. 7 PNPS of 1959 about Requirements and Simplification's of Party (State Gazettete No. 149 of 1959), Law No. 13 of 1960 about Recognition, Supervision, and Dismissal of Political Parties (State Gazette No. 79 of 1960), The Rule Highest War No. 7 of 1960, about Political Activities during Danger Times (State Gazette No. 4 of 1961), Law Number 3 of 1975 on Political Parties and Golkar (State Gazette on 1975 Number 32, Supplementary State Gazette No. 3062), Law No. 3 of 1985 on the Amendment of Law No. 7 of 1975 on Political Parties and Golkar Party (State Gazette No. 12 on 1985), Law No. 2 The year 1999 about political party (State Gazette No.22 of 1999) and Law No. 31 of 2002 about Political Party (State Gazette No. 138 of 2002).

² Namely there is unlawful act was done by the management of political parties against the members.

accordance with the provisions of the Article 1365 of Civil Code, an unlawful act should contain the elements as follows:

- 1) There is an act
- 2) Act against the Law
- 3) There is guilty
- 4) There is a damage for the victim
- 5) There is a relationship between actions and damages³

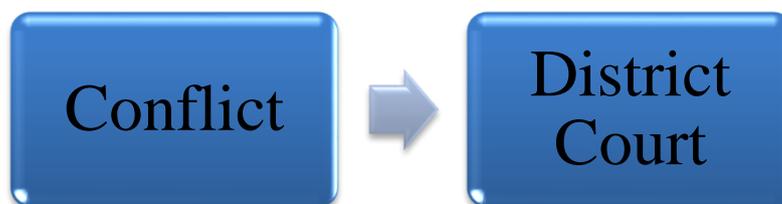


Figure 4.1.
The Intra Party Conflict Settlement before the Enactment of Political Party Act

b. Political Party Act No. 31 of 2002

The first regulation about intra party conflict settlement was adopted in Political Party Act No. 31 of 2002. It was regulated under Article 16 that stated:

- (1) Political party dispute regarding to this law is proposed to district court.
- (2) District court decision is final and binding and only may be proposed into Supreme Court on cassation level.

³M. Anwar Rachman, 2016, *Hukum Perselisihan Partai Politik*, Jakarta, PT Gramedia Pustaka Utama, p.188-192.

- (3) The dispute meant by paragraph (1) is settled by district court no longer than 60 (sixty) days and by Supreme Court no longer than 30 (thirty) days.

From the regulation above, this Act does not clearly identify what the kinds of dispute are, which may be proposed into district court. The explanation of Article 16 Political Party Act 2002 only stated that “As long as there is no specific regulation in this Act, the procedure to settle the dispute is conducted by being based on the applicable procedural law”.

It means, any kind of disputes appear in political party, they can be settled by district court. As the disputes may cover the formation, the membership, management and budgetary of political party. Finally, Political Party Act No. 31 of 2002 positioned a district court as the only one mechanism to settle down the political parties’ dispute.

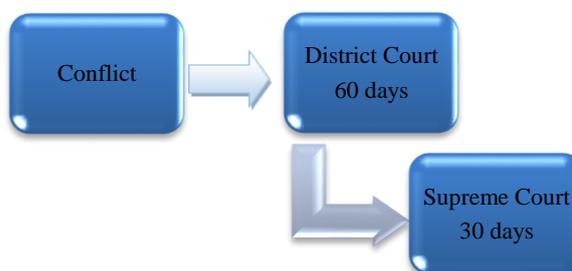


Figure 4.2.
The Intra Party Conflict Settlement based on Political Party Act No 31 of 2002

c. Political Party Act No. 2 of 2008

When Political Party Act 2008 replaced Political Party Act 2002, the mechanism to settle down the dispute also changed. In etymology aspect it changed from dispute become conflict. It was also attached by the limitation of conflict meaning under Political Party Act 2008. It is implied in the explanation of Article 32 that sated the meaning of “political party conflict” are (1) the conflict regarding the management (2) violation of political parties members (3) the dismissal without obvious reason (4) abuse of power (5) financial accountability and (6) objection against the political parties decision.

Beside regulating clearer on the conflict matter, this law also opens the opportunity to settle the conflict by non litigacy way or outside the court. It means that there is chance to settle down the conflict through, reconciliation, mediation or arbitration. Article 32 of Political Party Act 2008 explains it more details, as follows:

- (1) Political party conflict settled by deliberation.
- (2) In the case of deliberation as mentioned in paragraph (1) is not reached, the conflict settlement of political party should be taken through the courts or out of court.
- (3) The settlement of conflict outside of court as mentioned in the paragraph (2) can be done through reconciliation, mediation or arbitration political party which the mechanism is regulated in the Articles of Asscoaiation.

Then Article 33 of Political Party Act 2008 state that:

- (1) The case of political parties regarding to the regulation in this Act proposed through district court.
- (2) The decision of the court is the first and last decision, and only be proposed cassation to the Supreme Court.
- (3) The case as mentioned in paragraph (1) settled by the district court no longer than (60) sixty days since the lawsuit registered by the registrar of the court and by the Supreme Court no longer than 30 (thirty) days since cassation memory listed in the registrar of the Supreme Court.⁴

This Act does not regulate about the existence of political party tribunal. It could be assumed that there is no obligation for political parties to establish a political party tribunal. This Act only provides a space for political parties to resolve their intra part conflict by deliberation and enter into the court as well as out of court. In other words, the external intra party conflict only can be reached if the deliberation process or internal settlement does not give any results.

⁴Political Party Act 2008, Article 32 and 33.

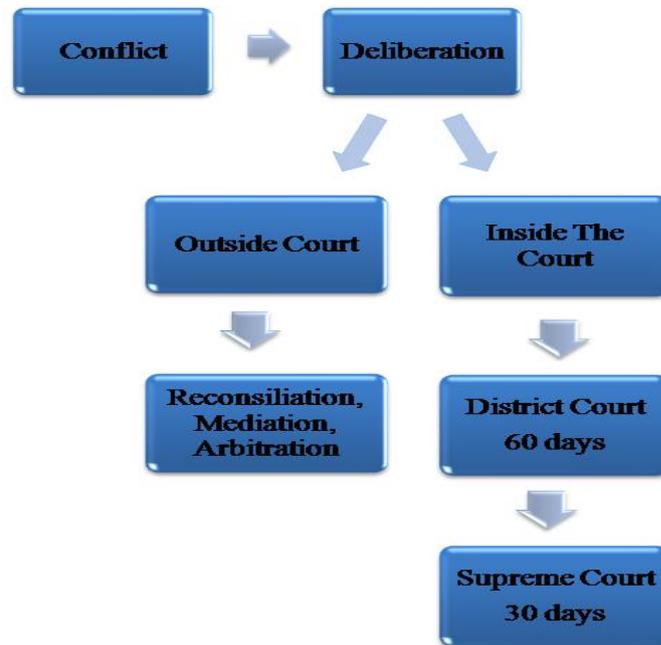


Figure 4.3.
The Intra Party Conflict Settlement based on Political Party Act
No. 2 of 2008

d. Political Party Act No. 2 of 2011

The newest regulation about political parties' conflict is regulated under Political Party Act No. 2 of 2011, particularly Article 32 and Article 33. The specific regulation contains in 2 (two) articles and 8 (eight) paragraphs regarding to the intra party conflict settlement of political party, as follows:

(1) Political party conflict shall be settled by internal political party mechanism as regulated in the Articles of Association.

(2) The settlement of intra party conflict as mentioned in paragraph (1) shall be done by a political party' tribunal or a body of different name formed by the political party.

- (3) The structure of political party' tribunal as mentioned in paragraph (2) shall be reported by political parties chairman to the ministry.
- (4) The intra party conflict settlement as mentioned in paragraph (2) shall be completed in no longer than 60 (sixty) days.
- (5) The decision of the political party' is final and binding internally in the case of the dispute related to the management of political party.

Article 33 also was amended, as follows:

- (1) In the case of conflict settlement referred to in Article 32 cannot be reached, the conflict settlement is done by the district court.
- (2) The decision of the district court is the first and final decision, and can only be proposed through cassation to Supreme Court.
- (3) The conflict as mentioned in paragraph (1) would be settled by the district court no longer than (60) sixty days since the lawsuit is registered by the Registrar of the court and Supreme Court should sttle the case no longer than 30 (thirty) days since cassation memory is listed in the registrar of the Supreme Court.⁵

⁵Political Party Act 2011, Article 32 and 33.

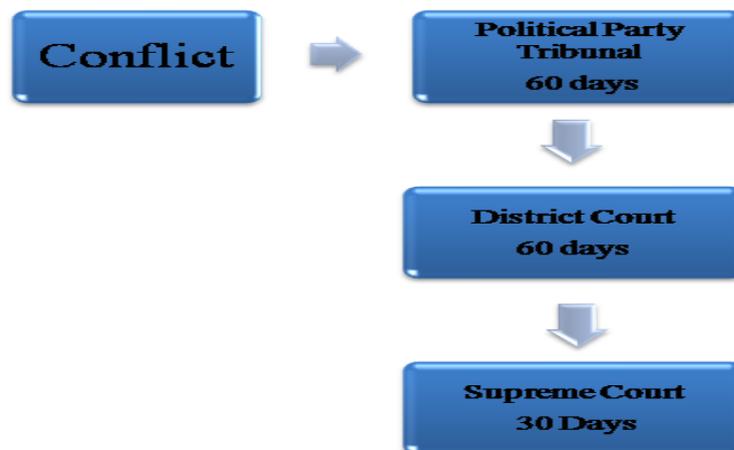


Figure 4.4
The Intra Party Conflict Settlement based on Political Party Act No. 2 of 2011

No	The Differences	Civil Code	Political Party Act No 31 of 2002	Political Party Act No. 2 of 2008	Political Party Act No. 2 of 2011					
1.	Institution	By Court	1.District Court	1.Deliberation	1.Political Party Tribunal					
			2.Supreme Court	2.Court/Outside Court	2.District Court					
				3.Supreme Court	3.Supreme Court					
2.	Period of Conflict Settlement									
						1. District Court	Not Regulate	60 days	60 days	60 days
						2. Supreme Court	Not Regulate	30 days	30 days	30 days
						3. Deliberation	Not Regulate	Not Regulate	Not Regulate	Not Regulate
						4. Political Party Tribunal	Not Regulate	Not Regulate	Not Regulate	60 days

Figure 4.5
The Intra Party Conflict Settlement

2. Intra Party Conflict Settlement based on The Political Parties Articles of Association (Anggaran Dasar dan Anggaran Rumah Tangga)

The main function of an organization or an institution including political party is as an assembly and association place. In the future the members of political parties can express all kinds of desires which represents their own interests as well as public interests, because everyone may show off their interest. Therefore the polemic between the members of organization are very possible to happen. Arbi Sanit stated that the function of political parties as a social-political organizations which are formed to protect and fight for their aspirations in the form of their own values and narrow interests to authorize or build access to the state and as its facilities.⁶

The Articles of Association (AD/ART) is a form of Act which contains guideline of the organization in the form of official-legal regulations, approved and known by all the members of political parties which contains the purpose, principle, ideology and detail party rules. The Articles of Association reflects the aspirations of the vision and mission of the political parties. In addition, the Articles of Association can be interpreted as the political party basis in achieving the purpose, as management and the empowerment political parties' resources.

⁶ Arbi Sanit, 2003, *Menggugat Partai Politik*, Jakarta, Pena Media Utama, p.2.

The Articles of Association should become the legal basis in the whole process of the implementation of an internal mechanism of political parties, including the intra party conflict settlement. In the United Development Party, the Articles of Association it explains that the political party tribunal is the institution that consists of the United Development Party leaders who are competent in law and politics. They are able to work collectively have duty and authority to settle the intra management conflict of United Development Party.⁷ While in Golkar Party, the Articles of Association Party assert that to settle the intra party conflict of Golkar Party, it is formed a political party tribunal.⁸

As already delegated by Political Party Act, the intra party conflict settlement should be settled internally by referring to Political Party Articles of Association. The problem is that the Articles of Association does not give a clear procedural mechanism to settle the conflict. It can be seen from several Articles of Association which do not regulate clearly and concretely. It may cause legal uncertainty. It causes the conflict trapped into prolonged conflict and drives the conflicting parties to settle their intra party conflict through court (external) mechanism.

3. The Role of Government in Intra Party Conflict Settlement

In Article 1 paragraph (6) and (7) of Political Party Act 2011, it is stated that Ministry is Ministry of Justice and Human Rights and paragraph (7) Department is Department of Justice and Human Rights. It

⁷United Development Articles of Association, Article 23.

⁸Golkar Articles of Association, Article 40.

is implicitly explained that all matters regarding to the political party are handled by Ministry of Justice and Human Rights. Overall in Political Party Act the authoritative ministry is Ministry of Justice and Human Rights. In Indonesia, the problems often appear in the internal political parties on how the position of the government in the intra party conflicts. The Act explains that the government (read: Ministry of Justice and Human Rights) was not allowed to participate in intra party conflict settlement. In other words, it stated that the government is in the passive position which is only waiting for the finalization of the internal conflict whether it is settled internally or externally. The involvement of government in conflict settlement will only add polemics.

From the explanation related to articles 32 and 33 in the Political Party Act 2011, it is clear that all the kinds of intra political party conflicts shall be returned to the internal party, without any intervention from the elements of the government including the Ministry of Justice and Human Rights.⁹ The government should encourage the parties to settle down the intra party conflict internally according to their Articles of Association and also may settle the conflict through the courts in accordance with prevailing laws and regulations.

Political intervention from the Executive may extremely disturb the process of intra party conflict settlement. Mostly, the intervention will not settle the conflict but hamper the situation and makes the conflict getting

⁹Article 24 of Political Party Act stated that, in the case of political party management conflict happened as the result of highest decision forum of political party, the legitimation of management changing could not be done by Ministry until it is settled.

worst.¹⁰ Even though the authority of Administrative officials in this case the Ministry of Justice and Human Rights to publish the decree about the approval of the management of the party is a command of Act, but it does not mean the government have authority to determine which is the legitimate management of political party or not. Supposedly the decree of the Ministry of Justice and Human Rights on the legitimation of the management of political parties should be based on the results of political party tribunal or court. Thus, the authority of Ministry of Justice and Human Rights is not to interfere the intra party conflicts as well as to aggravate circumstances dual leadership in the political party.

The decree of the Ministry of Justice and Human Rights is basically administrative in nature. In other words, the ministry may not interfere the legal aspect of political party tribunal decision or court decision.

The vulnerability relationship between the government and the conflicting party causes many suspicious effects. Alexander Litaay from PDIP fraction, strongly rejected even tends to be suspicious and cynical to respond the opinion of the government by saying:¹¹

"PDIP formerly PDI is the party that most often made Central Management (DPP) overflowing. The government did

¹⁰ As conflict that happened in the Golkar Party and United Development Party the dispute which brings to the court is Ministry of Justice and Human Rights Decree which legitimate one of the management of party. Although the regulation in Political Party Act stated that when the intra party conflict settlement through internal mechanisms or party tribunal not been reached, then conflict settlement is done through the District Court. In this case, before the settlement mechanism done through Court but the Ministry of Justice and Human Rights had issued a decree which legitimate one of the management based on the decision of party tribunal or by the request of one party.

¹¹See Risalah Rapat Panitia Kerja Komisi II DPR RI with Dirjen Kesatuan Bangsa, and Politik Kementrian Dalam Negeri, and Dirjen Administrasi Hukum Umum Kementrian Hukum, and HAM, on Wednesday, December 8th 2010, Jakarta, Sekretariat Jenderal DPR RI, p. 26-27.

extraordinary intervention, made three congress at the same time, even though the Articles of Association as a highest decision in political party has determined the legal one. Therefore, intra political party settlement will be better to be settled by themselves, avoid any possibility of the government intervention, moreover the court. Who may guarantee the government, as well as court will be neutral in dealing with intra party conflict? I am still doubt. The natural insticnt by the government when entering into internal political party is how to interfere and dominate the party, especially opposition political parties. The duty of the government against political parties is only to legitimate the valid management based on the Articles of Association. I reject the opinion of the government about the acknowledgement of legal General Chairman (Ketua Umum). It is acknowledged or not general chairman of political parties depends on the close or not the relationship with the government. So, we have to let the intra party on deciding the legal management based on their Articles of Association, not to the government or any institution.”

Khatibul Umam Wiranu, from Democrat Party-fraction, was also a member of Commission II of the Parliament who strongly rejected even tended to be suspicious and cynical to respond the opinion of the government and agreed if the intra party conflict was settled internally, by stating that:¹²

“I suggest that it would be better if intra party conflict is returned to the political parties as the meeting ideas and aggregation that are formed together. Then the parties can involve many thousand people, branches and regions. So it is going to be a problem of many people and public. When the conflict brings into the three judges only in the court, the judges perspective will be narrower rather than the conflicts faced by the political parties. So how unfair a political party which involving a thousands of the masses, managements, and voters be only determined by three judges. The three judges’ subjectivity will be influenced by the closeness of the conflicting party, how many envelopes that warlike, and also how the transaction will be done by the judges with the conflicting party’s management. This is my experience when I became a part of party management or NGO”.

¹²*Ibid.*, p. 27.

Once again it is believed that the duty of the government against political parties is only to legitimate the legal management based on the political party Articles of Association and not more than that. The government has to be limited by any constraints in order to avoid abuse of power.

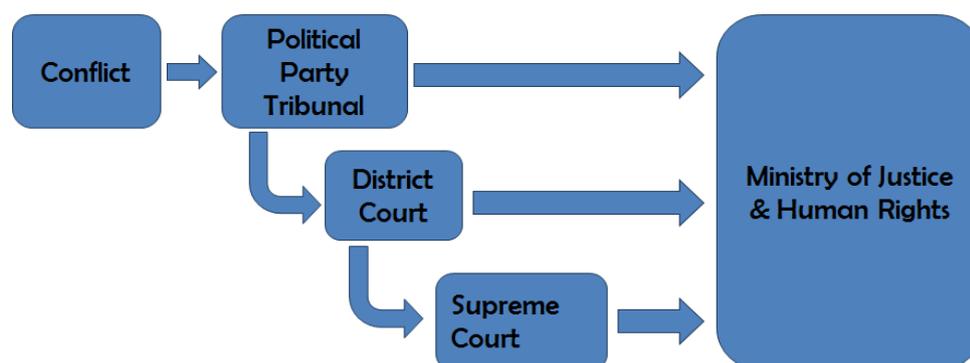


Figure 4.6
The Role of Government in Intra Party Conflict Settlement

B. Brief Description of Intra Party Conflict of Golkar Party and United Development Party

"If there is no conflict¹³ or the dispute¹⁴, it will be not named as political party". It was the cynicism or negative stigma of people to political parties. The cynicism describes how abhorred people over longlast conflicts among political parties. It may happen to senior political parties as well as

¹³Conflict means: (1) strife; dispute; conflict, and (2) of tension or conflict in fiction or drama (conflict between two forces, the conflict within the character, the conflict between the two leaders, and so on). Kamus Besar Bahasa Indonesia (KBBI).

¹⁴According to KBBI, the dispute can be defined into three: a causing disagreements, quarrels or strife, (2) a dispute or disagreement, and (3) case (in court).

junior, who was born in the New Order/Reformation era, big/small political parties and nationalist/religion. All political parties have ever lived with the intensity and the various impact. According to Arbi Sanit, it is cause the strategic position of the party today failed to be balanced with the implementation of its functions.¹⁵

Political parties as containers of the meeting of many interests are certainly vulnerable from conflicts to occur. Political parties as modern organizations will always be faced with the reality of the conflicts. For example, the conflicts are about views of ideas or ideologies and conflicts of interest.¹⁶

According to Ramlan Subakti, conflict is a social phenomenon that is always happened in each layer of society, which means the conflict cannot be removed. But if the conflict is left to grow without control, it can damage the state and society and it needs to takes a real action of conflict settlement to avoid the negative impact of conflict.¹⁷ This is related to one of the functions of political parties as a means of conflict management. Ideally in a heterogeneous country which applied democracy, the competition and the differentiation of opinion causing conflict is common things. Therefore, the role of political parties as a psychological support and community organization is needed. But currently it shows the opposite, political parties

¹⁵Arbi Sanit, 2003, "*Pembaharuan Mendasar Partai Politik*", dalam Mahrus Irsyam dan Lili Romli (Editor) "*Menggugat Partai Politik*", Laboratorium Ilmu Politik Universitas Indonesia, p. 4.

¹⁶Muhtar Habodidin, "Konflik Partai: Perbandingan antara PKB dan PDIP", [http: download.portalgaruda.org./article.php?article=19711&val=1237](http://download.portalgaruda.org./article.php?article=19711&val=1237) accessed on 1st January 2017 at 10.00 a.m.

¹⁷Ramlan Subakti, 2010, *Memahami Ilmu Politik*, Jakarta, Grasindo.

are not able to become catalyst of the conflict but then thus become “lighter” of conflict with the existence of the intra party conflict.¹⁸

The reality of political parties which is close with the conflict accurately described by Daniel Sparringa with narration as follows:

“I think, no exaggeration to say that the self portrait of most political parties in Indonesia until this time generally is marked by the presence of a serious problem in almost all of the issue. As a result, very clear, instead of running the function of mediation and moderation of the interests of the constituents, political education and political recruitment, most political parties are busier feuding with one another and, worse, warring factions among their own fellow members of the party in almost every time they must make important policy. The events surrounding the succession of the leadership of the party to become a good illustration to illustrate the strong tendency of party as a moment to compete the leaders’ interest. The leadership of the political parties become increasingly difficult separated by individuals who become leaders”.¹⁹

The political conflicts have already been exist since long time ago in Indonesia. Even not only cases of pure political conflict, yet sometimes are influenced by economic issues, culture, religion and others. Indonesian political stage before and after President and Vice President election 2014, some political parties that participated in the election has presented a conflict split management in central level that tend to lead to wider enmity which is marked by the attitudes and behavior and unwillingnes to communicate between fellow members of the parties as a result of different orientation, struggling to take the position, plus the interests as a result of the failure to build a consensus in distributing the aspirations and political support.

¹⁸Zulpandi, *Op.Cit.*

¹⁹Daniel Sparringa, 2007, *Transisi Demokrasi di Indonesia: Menstrukturkan Sebuah Peta Jalan Baru*, dalam Akbar Tandjung, “*The Golkar Way, Survival Partai Golkar di Tengah Turbulensi Politik Era Transisi*”, Gramedia, p.xxvi.

In the experience of democracy in Indonesia, election on 2014 initiate new conflicts in Golkar Party and United Development Party.

As a result of that prolonged conflict both Golkar Party and United Development Party affected by pills and negative effect. Even though, General Election Commission (KPU) allow those both parties to participate in 2015 simultaneous election, but KPU requires them (each conflicting camp) to propose the same candidate.²⁰ Finally Golkar Party and United Development Party feels the worst thing at the simultaneous Regional Election on 2015. Based on the research of People's Voters Education Network (JPPR) shows on 15th December 2015, Golkar Party and United Development Party get a weak votes; 49 (Golkar Party), 28 (United Development Party) in Regional Election.²¹

1. In Case of Golkar Party

a. Brief Description of Intra Party Conflict

Naturally, the intra party conflict appearing in the political party should be settled by referring to the political party Articles of Association. Yet, the reality is that there is an abuse of interpretation against its Articles of Association. For example, when plenary meeting was closed Agung Laksono's camp recontinue without not

²⁰ To accommodate the conflict within the PPP and Golkar, the Commission revised the PKPU No. 9 of 2015 concerning the election of Governor and Vice Governor, Regent and Vice Regent and the Mayor and Vice Mayor. KPU member: Hadar N. Gumay said, the Commission can accept the proposing party candidates from conflicting parties as long as the name of the same candidate pairs filed in two different files. See Perbolehkan Golkar-PPP ikut pilkada KPU Dinilai Tak Netral, <http://www.cnnindonesia.com/politik/20150715142916-32-66564/perbolehkan-golkar-ppp-ikut-pilkada-kpu-dinilai-tak-netral/>, accessed on 11st December 2016 at 1.47 pm.

²¹ Achmad Fachruddin, 2016, "Penyelesaian Sengketa Internal Partai yang Demokratis", p.7. Paper presented in 3rd National Conference on Constitutional Law, Bukittinggi, 2016.

fulfilling the quorum as regulated by Articles of Association and suddenly non-activate the party chairman even it was not regulated by Articles of Association. Non-activating is contradict with the Golkar Party Articles of Association, article 30 paragraph (4) letter a, because the highest decision-making is taken by congress not plenary meeting. This explanation is one of the examples of the disobedient or interpretation abuse against articles in Political Party Articles of Association which may cause intra party conflicts.²²

The existence of dual camps in both parties was the result of a conflict in congress. Difference views on Articles of Association and the results of the previous Congress in Riau has brought conflict. According to Articles of Association the management will expire on October 8, 2014, but in Riau Congress was extended until January 2015. Abu Rizal Bakrie as the current chairman supported the implementation of the congress based on the recommendation of Riau Congress. On the other hand many of them refused and supported for the implementation of the congress based on the Articles of Association. So Bakrie along his side and then by Rapimnas VII Golkar Party agreed that the congress was held on 30 November - 2 December 2014, during the plenary meeting session to legalise the materials planning for congress, conflicts happen due to the arrival of Young Generation of Golkar Party (AMPG) so that the plenary

²²Septa Wiranita Putri, "Konflik Internal Partai Golkar", <http://septa51.web.unej.ac.id/2015/12/15/konflik-internal-partai-golkar/> accessed on 11st December, 2016 at 11.01 am.

cancelled. This led to the dismissal of Aburizal Bakrie as Chairman and Idrus Marham as Secretary General who were considered unable to finish the Plenary Meeting as a legal requirement for conducting the congress.²³

However, despite of the dismissal status, Bakrie still continued to conduct congress in Bali on November 30 to December 2, 2014. This triggered Agung Laksono's camp also conducted other congress in Ancol on 6-8 December 2014. Those both congresses have created two new management structures in the body of Golkar Party which are then registered to the Ministry of Justice and Human Rights on the same day on December 8, 2014. Although the negotiations had been implemented (Islah) for three times, on December 23, 2014, January 8, 2015, and January 14, 2015 with a final agreement was a merger management and agreed to accept anyone who would become chairman of the party, but in determining the party chairman still had not found a solution. Conflict continued to the court because there was no consensus was made. Then, on March 10, 2015 Ministry of Justice and Human legalised the management of Agung Laksono (Ancol Congress) as a legal management. The legalisation was based on the decision of the Golkar Party Tribunal, which in this case was used to legalise the management. This was not accepted by Bakrie's group which stated that the decision of Golkar Party Tribunal did not

²³*Ibid.*

win the two sides, so the decree of Ministry of Justice and Human Rights was inappropriate and legally flawed. Thus, the decree was challenged to the Administrative Court and as a result the claim was accepted then the Decree of Ministry of Justice and Human Rights was canceled and revoked. Agung Laksono disagreed with the decision and brought to the appellate and cassation until the final decision in the Supreme Court which confirmed the first instance decision. The Court legalised Bakrie's group, but the Supreme Court did not ask Ministry of Justice and Human Rights to issue a new Decree for Bali Congress and therefore it caused a vacuum of management.²⁴

b. Regulation in Golkar Party Articles of Association

In the Golkar Party Articles of Association²⁵ Article 40 states that to settle the intra party conflict of Golkar Party, it is formed a political party tribunal.²⁶

c. Mechanism of Golkar-Intra Party Conflict Settlement

Golkar Party already tried to settle their intra party conflict through political party tribunal.²⁷ Since the failure of party tribunal to

²⁴*Ibid.*

²⁵Article 40 in AD and Article 52 in ART.

²⁶In the next paragraph, means paragraph 4 it is stated that the further explanation about the conflict settlement and political party tribunal explained in *Anggaran Rumah Tangga. In ART*, Article 52 explains about the kind of conflicts (political party conflict), the kind of conflict settlement, it could be settled by political party tribunal, arbitration and court. As well as the composition of Golkar party tribunal which is consist of chairman, vice chairman and 5 members and determined by national congress.

²⁷The intra party conflict settlement through political party tribunal was failed. The amount of judge in Golkar Tribunal is consist of even number which means divided into two sides. It causes that judge decide in a doubt. The decision issued by Party Tribunal is really unclear. That decision

settle the intra party conflict, then the conflict was settled by court.²⁸

The internal conflict settlement by political party tribunal as well as court did not give any result. The conflict settlement was influenced by the deliberation which was led by Vice President-Jusuf Kalla as the big figure in Golkar Party.²⁹

d. Decision

Both conflicting parties agreed to conduct an extraordinary congress in Bali. At the extraordinary congress, Setya Novanto was selected as Golkar Party Chairman.³⁰ Then, on April 24, 2016 Ministry of Justice and Human Rights-Yasonna Laoly issued decree on the management legalization to Idrus Marham as general secretary of Golkar Party.³¹

is interpreted by Ministry of Justice and Human Rights that the legal management is under Ancol Congress (Agung Laksono). That decision by considering the interpretation of Party Tribunal Decree which is Judge Andi Matalatta and Judge Djasri Marin win Agung Laksono' group. Another side is Judge Natabaya and Judge Muladi do not give similar prespective, they only propose four recommendation namely: Avoiding the winning party to takes all, the rehabilitation for dismiss party, appreciation for the loosing party, and for the looser will not establish a new party. See Netralitas Tantangan Terberat Mahkamah Partai Golkar, <http://www.gresnews.com/berita/politik/18082-netralitas-tantangan-terberat-mahkamah-partai-golkar/0/>, accessed on 3rd January, 2017, at 8.23 am.

²⁸Supreme Court Decision No.490K/TUN/2015 which strenghtened Decree No. 62/G/2015/PTUN-JKT

²⁹Fortunately, Golkar Party still has central figure like Jusuf Kalla (JK) and Luhut Binsar Panjaitan (LBP). The role of those both figure in the golkar intra party conflict is big. Even, JK was succeed to asking both conflicting group in making a consensus regarding on the participation on simultaneous local election,. See Dua Kubu Partai Golkar Mulai Proses Rekonsiliasi, <http://siarjustisia.com/news/view/4634/dua-kubu-partai-golkar-mulai-proses-rekonsiliasi> , accessed on 3rd January, 2017, at 10.44 am.

³⁰ The election Golkar Party Chairman on extraordinary congress in Bali (17/5/2016) becomes anti-climax. At the beginning it was assumed that the congress will held democrtically and transparent. This is happen when the candidate of party chairman-Ade Komaruddin got 173 votes and deserve to go to grand final with Setya Novanto which got 277 votes from 544 votes. Yet Ade choose to decline by reasoning that he is still 50 years old and Setya was 60 years old. See Achmad Fachrudin, *Loc.Cit.*

³¹ The Number of Decree is M.HH-04.AH.11.01 of 2016 about the Legitimation on Composition and Management of DPP Golkar Party during 2016-2019. Consist of at least 300 names from

2. In Case of United Development Party

a. Brief Description of Intra Party Conflict

Similar to Golkar Party, dual leadership in the management system becomes one long-last matters in United Development Party. The United Development Party (PPP) has also split into two leaderships. One was led by Djan Faridz from the Mukhtamar (national congress) in Jakarta in November 2014 and another faction was led by Muhammad Romahurmuzyi from the Surabaya Mukhtamar in October 2014.³² Then the duality became worst because of the intervention of the Ministry of Justice and Human Rights that legalised one camp and caused another party propose the suit to the court. This conflict started when the Political Party Tribunal (United Development Party Tribunal) issued a decision to held a reconciliation (Islah) to determine the schedule of United Development Party Congress VIII. The result ordered the conflicting parties to reconcile and the legal management was the previous management. Political party tribunal's decision was final and binding because neither party objected to the court.

However, Romahurmuzyi held a congress in Surabaya on October 15 to 18 and appointed Romaurmuziy as Chairman of the

central level until local level. See Ini Susunan Pengurus DPP Golkar, <https://news.detik.com/berita/3221198/ini-susunan-pengurus-dpp-golkar-2016-2019>, accessed on 3rd January 2017 at 1.10 pm.

³²See Political Parties Must Resolved Internal Conflict for Future Election, <http://www.thejakartapost.com/news/2016/04/26/political-parties-must-resolve-internal-conflicts-for-future-elections.html> accessed on 11st December 2016 at 11.51 am.

United Development Party. It was a violation of Political Party Tribunal's decision. Furthermore, on October 30-November 2, 2014 Congress VIII held in Jakarta and resulted Djan Faridz as Chairman. But in this case, Ministry of Justice and Human Rights instead issued a Decree to legalise the management of the results on the Surabaya Congress and for sure causing intra party conflict. Therefore, Ministry' Decree was being sued in the Administrative Court and it was accepted and also declared that Ministry' Decree was cancelled and should be put off. In this case, there had been no follow-up of Ministry for the previous decrees, despite of Mukhtamar Islah had been conducted and resulted Romahurmuziy as selected Party Chairman. But Djan Faridz still does not recognize the stewardship of Romahurmuziy because it is considered as a contrary to the decision of the legal process. Although Romahurmuziy already well intentioned to combine and invite Djan Faridz to follow the results of the congress and join in the Romaurmuziy' management, but it still did not find the way because the only reason is the cancellation of Ministry' Decree by Supreme Court against the legitimation of Romaurmuziy' from the Surabaya congress.³³

b. Regulation in United Development Party Articles of Association

In United Development Articles of Association, Article 23

³³Interview Rohamurmuziy, United Development Party Chairman in Konferensi Nasional Hukum Tata Negara 3, Bukittinggi, September, 7th 2016

explains about the existence of political party tribunal. The political party tribunal is the institution that consists of the United Development Party leaders who are competent in law and politics. They are able to work collectively have duty and authority to settle the intra conflict management of United Development Party.³⁴ The decision of their political party tribunal is final and binding.³⁵

c. Mechanism of United Development Party-Intra Party Conflict Settlement

The step taken by Mahkamah Partai on settled United Development Party conflict was the tribunal that received DPW/DPC PPP proposing the intra party conflict should be settled. Romi groups also proposed a request, in order that their management was legalized. Then, the tribunal issued No: 44/PIP/MP-DPP/2014 on October, 11 2014 which the point asked both party to stop their activity and ask them to held an *Islah* (congress). Tribunal held meetings twice with Rohmahurmuziy' group and twice with Suryadarma' group. The approach could not find any good result, and the conflict still happens. On October, 11 2014 the Tribunal held a trial and resulted eight decisions, among others:³⁶

³⁴Article 23 of United Development Party Articles of Association also explains about the composition and other duties of their political party tribunal.

³⁵Article 20 paragraph (8) of United Development Party' Articles of Association

³⁶Anwar Rachman, 2016, *Op.Cit.*, p.148.

1. The legal *Pengurus Harian DPP* of United Development Party is DPP resulted from Mukhtamar VII Bandung with Suryadharma Ali as Chairman and Romi as General Secretary
2. Tribunal ask both conflicting parties to conduct an *Islah*
3. All party activities in national level only legal if conducted under DPP resulted from mukhtamar VII Bandung and other activities as well as the policy outside is illegal.
4. Tribunal gives a deadline during 7 days since the decision issued and if during that 7 days daily meeting could not be held to determine the schedule of congress, *Majelis Syariah* will take over the implementation of congress.³⁷ Same as like as what happened in Golkar Party, eventhough the intra party conflict already settled by their political party tribunal, but it it still going into court because the conflicting parties are unsatisfied with the decision.³⁸

d. Decision

It is different from the result of Golkar extraordinary congress, Mukhtamar VIII/Islah/Congress of United Development party in Arama Haji, Pondok Gede which held on April 8, 2016 end by sad ending. Since Djan Faridz camp still does not recognize Romy as the elected Chairman of United Development Party and still keep defense

³⁷The Decision of United Development Party Tribunal No: 44/PIP/MP-DPP/2014 dated October 11, 2014, the decision of tribunal already got the legalization from Ministry of Justice and Human Rights, but the Ministry's decision about the management legalisation sued by Djan Faridz camp to Jakarta Administrative Court.

³⁸Supreme Court Decision No. 504K/TUN/2015 which is strenghtened Decree No.217/G/2014/PTUN-JKT, and cancelled Decree No. 120/B/2015/PT.TUN-JKT and cleary declared that the intra party conflict already end.

the decree of Supreme Court that the legal management is under Jakarta Congress.³⁹

Various conflicts that happened in Golkar Party and United Development Party as explained above show that the unhealthy dynamics of political parties. Therefore, it could be founded several main issues which cause factors of intra party conflict in Golkar Party and United Development Party such as, diversion of mandate⁴⁰, power rivalry, ineffectiveness of Political Party Tribunal, the violation of law and court decision and the government intervention on the intra party conflict settlement.⁴¹

C. The Obstacles Faced in Intra Party Conflict Settlement

The intra party conflicts that led to the fragmentation of the parties into dual leaderships shows a failure of political parties in the process of institutionalization. According to Vicky Randall and Lars Svasand (2002), as an organization which has the formal rules and the purposes, a political party may be seen institutionalized if they have a good behavior, attitudes and

³⁹ Supreme Court legalise the management of Djan Faridz as United Development Party Chairman and Dimiyati Natakusuma as General Secretary. Djan Faridz argued that the decision of Supreme Court is final and binding. He also argued that the decision of Ministry of Justice and Human Rights regarding the legitimation of Romy group was only one day after Yasona Laoly officially inducted. Furthermore, Administrative Court cancelled the Ministry' Decree against the legitimation of Romy as Party Chairman. See, Achmad Fachrudin, *Loc. Cit.*

⁴⁰According to Indra. J. Piliang (Golkar), it starts from the diversion of mandate to Aburizal Bakrie (ARB) as Party Chairman in Plenary Meeting Jakarta. It contains two option, (1) determine ARB as President/Vice President candidate from Golkar and (2) give full mandate for ARB to create a coalition and communication with any political party (whoever). The fact is, ARB is not candidate of both, but he propose Prabowo Subianto – Hatta Rajasa as President and Vice President candidate. So, in the different interpretation the meaning of full mandate given is ARB as president or vice president candidate, not let Golkar Party to propose a couple of candidate outside its cadres and outside the party, *Ibid.*, p.8.

⁴¹Golkar: "Politik Pecah Belah, Upaya Gembosi KMP", <http://nasional.kompas.com/read/2015/04/12/17063061/Golkar.Politik.Pecah.Belah.Upaya.Gembosi.KMP>, accessed on 20th December 2016 at 3.37 pm.

integrated culture. Institutionalization of political party is a primary requirement to let the stability of political party. As ever been stated by Huntington in 1969 that the institutionalization of political parties as a process where a party/organization and the procedure obtain the value and the degree of stability.

Referring to the definition, it can be assumed that the intra party conflicts experienced by Golkar Party and United Development Party are neglectfullnes of internal party to control the process of institutionalization. Although both parties are the oldest political parties in Indonesia, but we can see that it was still not institutionalized well. The political parties who has good institutionalization of course will be able to manage the differentiation and clash argumentation. For sure it may avoid the disunity in the political party.⁴²

In addition, the maturity of the party elites in intra party conflict settlement is also needed. This is in line to avoid the involvement of other state organs (executive) or judiciary (judicial) to intervene the process of settlement between party elites. Basically the conflict in Golkar Party is only caused by partisanship against the presidential election in 2014 and different interpretation on the implementation of the highest decision making from the Articles of Association and Riau Congress. The conflict happens because of the selfishness each party about power rivarly.⁴³ Power rivalry is always

⁴²Zulpandi, *Loc. Cit.*

⁴³Maria Madalina, 2016, "Manajemen Konflik Internal Partai Guna Mewujudkan Partai Politik yang Demokratis", p. 12. Paper presented in the 3rd National Conference on Constitutinal Law,

close with the political conflict, and intra party conflict experienced by Golkar Party caused the dual leadership over them. In this case the two conflicting camps must be wise in receiving any decisions and settle down their conflict. Meanwhile, the United Development Party (PPP) is also splitted into two leaderships.⁴⁴ This is the longest conflict in the history of the United Development Party. This indicates that the 2 years-internal conflicts is not a small issue. Some efforts have been made either with or without the intervention of the government to resolve the conflict of United Development Party, political party tribunal and senior leader aiming to resolve the conflict by holding a national congress of reconciliation, or islah.⁴⁵ Yet, the conflict does not end. At least there are three reasons which cause the islah become difficult taken by United Development Party.⁴⁶

First, the division of the political party is not based on an ideology matter, but it is more based on personalization of particular party figures of political party. The internal conflict between Romy and Djan Faridz is basically based on short term interest of both group as well as individual. Debating on the short term group as well as individual interests. The conflict between the two groups is actually about the elite competition regarding who will be the chairman of political party and who will be nominated as

Bukittinggi, 2016.

⁴⁴One led by Djan Faridz from the Muktamar (national congress) in Jakarta in November 2014 and another faction led by Muhammad Romahurmuziy from the Surabaya Muktamar in October 2014.

⁴⁵ The two strongholds has even met and explore the possibility of Islah in meeting at the residence of Djan Faridz. However, the roots of conflict still embedded. The point of islah become so difficult.

⁴⁶See Kemungkinan Islah PPP [http://www.politik.lipi.go.id/kolom/kolom-2/politik-nasional/1052-kemungkinan-islah-United development party](http://www.politik.lipi.go.id/kolom/kolom-2/politik-nasional/1052-kemungkinan-islah-United%20development%20party) accessed on 2nd December 2016 at 3.51 pm.

President. In other words, the conflict happened because the political party elites compete to take a portion of position. When each camp wants to reconcile, although both sides of conflicting parties already received the legitimation from different institution⁴⁷ supposedly, one side should be yield on behalf of common interest and sustainability of political party.

Second, the vacuum figures of political party who are able to mediate intra party conflict. From the experience of the Golkar Party, Jusuf Kalla becomes an effective mediator to neutralize the conflict between groups of Agung Laksono and Aburizal Bakrie. Luckily, Golkar Party has a figure like Jusuf Kalla. He is still considered as a major figure of Golkar and influential, neutral and have a strong political power, both internally as well as externally. Therefore, it is not surprising when Kalla meet Agung Laksono and Aburizal Bakrie in early February and finally succeeded in resolving conflict of Golkar. Unfortunately it is not for United Development Party. They do not have the figure as Jusuf Kalla that can be received by both sides of the conflicting parties. Most of senior leaders has shown the alignments to one group of political party, so that is difficult to find a neutral figure. For example, Hamzah Haz, Zarkasih Noor, and Mukhtar Azis are considered tending to one faction. Meanwhile, Suryadharma Ali, as party acknowledged chairman, however he cannot be a mediator because at the time he was

⁴⁷ Romaharmozij have received recognition and legitimation from Ministry of Justice and Human Rights but failed to get the recognition of Supreme Court because the verdict of Supreme Court won the Djan Faridz's camp. See Ini Alasan Menkumham Tak Sahkan Kepengurusan PPP Djan Faridz, http://nasional.kompas.com/read/2016/04/11/11373761/Ini.Alasan.Menkumham.Tak.Sahkan.Kepengurusan.PPP.Djan.Faridz/utm_source=RD&utm_medium=inart&utm_campaign+khprd, accessed on 11st January 2017 at 10.23 am.

detained.

Third, the weakness of intra party conflict settlement mechanism. Basically this current situation provides benefits for the political party because Political Party Act has provided a regulation to settle the conflict internally through a political party tribunal. However, as a new institution, political party tribunal still has not a clear settlement mechanism. This matter is getting worst because of the alignment of its members against the conflicting parties. It causes a difficulty to be neutral and objective in solving the conflicts. As a result, the decision of the political party tribunal is not strongly legitimate, and even tends to be ignored.

The settlement of intra party conflict legally sometimes does not guarantee that it is settled politically.⁴⁸ Therefore one of the choices for the Golkar Party or United Development Party is to reconcile outside the court with restoring the political party to the *status quo* which means that the legality depends on the result of previous congress before the conflict happened. Shortly, it requires a statemanship attitudes between conflicting parties to maximize the equalities between them. If not, how people believe that conflicting politicians can manage the country if their intra party conflict is not well-settled.⁴⁹

⁴⁸Maria Madalina, *Op.Cit.*, p. 13.

⁴⁹Lili Romli, "Mekanisme Penyelesaian Konflik Partai Politik", *Jurnal Nasional* 28th September 2007

D. *Mahkamah Partai* as Internal Party Tribunal in Political Party for a Better Resolution

1. The Effectiveness of the Existence of *Mahkamah Partai*

The first institution that is formed to trial the intra party conflict based on Political Party Act 2011 is the political party tribunal (*Mahkamah Partai*).⁵⁰ The existence of the political party tribunal is basically intended as a political party institution which is free and independent in carrying out the duty to investigate and decide the intra party conflict.

The experience of political parties shows that the autonomy of political parties becomes a strong reason for the organizers (internal) to treat the members arbitrary without interfere from outside parties. The aspirations of political party members and access to get the justice is closed and it causes political parties to be trapped into the disunity. The presence of political party tribunal is the result of the thought of legislators which would not want to open the opportunity of the government including the judicial institutions in the settlement of intra party conflict. In particular cases, when the conflict happened, the government is considered to interfere the internal process of conflict settlement. This is the reason why legislators establish a political party tribunal to settle the intra party conflict. This mechanism also prevent the intervention of the government to the political party.

⁵⁰The phrase of "Political Party Tribunal" is derived from the Arabic *Al Mahkamatu*, word *hakama yahkumu shighohnya ismul eat* (name of place) *majlisul hukmi place* that means the place of law or court.

From the explanation above it can be concluded that the political party tribunal is (a court) the agency as the place to uphold the law over an internal conflict or violation in political party. Then by establishing this tribunals, it aims to build political party as⁵¹:

- a. Autonomous institutions (independence parties);
- b. Modern organization;
- c. The organization that has the political maturity;
- d. To avoid the intervention of the external party;
- e. To manage internal conflict (avoid division/disunity);
- f. A representation of the sovereignty of the political organization.

From political parties' perspectives, the existence of the party tribunal is found in Article 32 paragraph (2). The article determines that "The settlement of intra party conflict as mentioned in paragraph (1) shall be done by a political party tribunal or a body of different name formed by the political party". That regulation puts party tribunal as the only instrument of political parties which is free and independent in settling the intra party conflict. By the Political Party Act, political party tribunal is given an authority to settle down the intra party conflict. This refers to Article 32 paragraph (1) which is based on the provisions in the Articles of Association. Therefore, the existence of political party tribunal is designed as an intra party conflict settlement mechanism of political parties with the intention to ensure the conflict settlement is resolved in

⁵¹M. Anwar Rachman, 2016, *Op.Cit.* p. 293.

line with the spirit of the Articles of Association more advancing the spirit which contained in the Articles of Association.

Related to this issue, Firdaus critically asserts that the authority of political party tribunal is atributive and functional to conduct the *quasi* judiciary function⁵² He explains, as follows :

"Indirectly and functionally the atributive authority of the political party tribunal puts the tribunal as a delegations of the state in political parties which the formation and filling hole are up to each party. Therefore the decision of the party tribunal is a legal product that must be obeyed by all functionaries and internal members and shall be respected externally by all parties including the state."⁵³

With the position and its authority, the party tribunal is considered as an organ of political parties which may ensure the sovereignty and integrity of political parties can be maintained, preserved and nurtured well. The political party tribunal serves as the organ that will control the highest authority in the political party and ensure those all internal process in accordance with the provisions of applicable regulation. The political party tribunal is the "fortress" of internal justice and a place for the functionarist and all political party members to confide and claim to defend their rights against management action, by using the Articles of Association as the basis of law in the whole process of the implementation of political parties internal mechanism. Moreover, the political party tribunal is oriented to strengthen the independency of the political parties in running their functions as one of the important pillars

⁵² Firdaus, 2015, "Mekanisme Penyelesaian Perselisihan Internal Partai Politik Menurut Undang-Undang Nomor 2 Tahun 2011 tentang Perubahan Undang-Undang Nomor 2 Tahun 2008 Tentang Partai Politik", p. 2.

⁵³ *Ibid.*

of democracy.

In the explanation of Article 32 paragraph (1) of Political Party Act 2011 it explains the absolute competence of political party tribunal which covers: (1) dispute regarding the management (2) violation of political parties members (3) the dismissal without obvious reasons (4) abuse of power (5) financial accountability and (6) objections against the political parties decision. In addition, Article 32 paragraph (4) of Political Party Act 2011 determines that the settlement of intra party conflict by the political party tribunal must be settled no longer than 60 days. This means during the period, the political party tribunal has to provide the decision related to the intra party conflict settlement and the decision according to Article 32 paragraph (5) is internally final and binding in the case of the conflict regarding the management. The word final and binding internally means that there is no possibility or there is no legal efforts that can be taken by the members and the board against the decision of the political party tribunal.

Yet the exception is in the Article 33 paragraph (1) excludes Article 32 paragraph (5) as long as the decision of the political party tribunal is reached. According to the applicable Political Party Act, when an intra party conflict of a political party happens, it should be settled by political party tribunal first, when it was not reached it may be solved through the courts. The settlement through the court stated that the decision of the court according to Article 33 paragraph (2) is the decision

in the first and last level and can only be proposed cassation to the Supreme Court. In other words, refers to the Political Party Act, the procedure of intra party conflict settlement must be settled internally first through the political party tribunal before the conflict draft enters into district court, only if it does not reach an agreement or a final decision in the settlement of conflict.

The existence of the intraparty conflict settlement through the political party tribunal as delegated by Political Party Act can be interpreted as a primary choice and an alternative effort to settle the conflict in internal forum which is pursued by the conflicting parties, before performing the legal efforts to court. In the political party tribunal settlement, it is expected that the conflict may be settled with good, quick and low cost and have the legal force by the decision against an agreement on certain points.

Intra Party Conflict Settlement of Political Party in Political Party Tribunal: between Sollen and Sein

The political party tribunal is designed as the only internal organ to settle the intra party conflict as regulated in the Articles of Association. The spirit of the formulation of political party tribunal is to avoid the involvement of external parties (the government and the court).⁵⁴ Since the facts prove that the intra party conflict becomes the legitimacy tools by cutting of the functions of political parties which are in conflict,

⁵⁴Bachtiar, 2016, "Penguatan Peran Mahkamah Partai dalam Penyelesaian Konflik Internal Partai Politik", p. 7. Paper presented in the 3rd National Conference on Constitutional Law, Bukittinggi, 2016.

especially if the party is not in line with the power holders. As happened in the case of the United Development Party and Golkar Party, it shows an indication that the recognition of the existence of the political party tribunal in the Political Party Act is not integrative and coordinative yet. It can be seen from the lack of regulation about intra party conflict of political party in Political Party Act 2011 which only regulate in 2 articles with 8 paragraphs.⁵⁵

Political parties are "forced" to develop the traditions to manage their intra party conflict elegantly in the framework of maturity for democracy. One of the functions of political parties is as the conflict management. When their own conflict could not be settled internally and how the political parties will resolve the conflicts that occur in the community. Therefore, the intra party conflict settlement mechanism which has been provided by Political Party Act should be defined as an effort for the maturity process on democracy that is roled by political parties. The aims of intra party conflict settlement mechanism are in order to culcate the political party tradition among functionaries and members.⁵⁶ It is expected that any differences that surfaced in the internal should not end with the divisions, but may be settled wisely with the consensus obtained through the political party tribunal mechanism. In this framework, it is time for political parties to institutionalize the intra party conflict settlement as a revitalization of the role of political party tribunal

⁵⁵ M. Anwar Rachman, 2016, *Op., Cit.*, p. 291.

⁵⁶Bachtiar, *Op.Cit.*, p.4.

in intra conflict settlement of political parties.

In the Article 32 and Article 33 of Political Party Act 2011 there is no clear institutional characteristics of tribunal political parties on the matters of:

1. The formation of political parties tribunal;
2. The accountability of political parties tribunal;
3. The legality of institutional/court judges of political party tribunal;
4. The structure and the position of the political parties tribunal;
5. The process and procedures of the trials in the political party tribunal;
6. The legal efforts against the decision of political parties tribunal.

Admittedly that the existence of political party tribunal in the political party system basically can not be completely free from the problem of interpretation on the regulating norms. This fact is illustrated in the various opinions among the experts who still question about the norms which causes the problem of interpretation, as expressed by Khairul Fahmi as follows :

"...there are a number of norms in the Political Parties Acts that cause many different interpretations and makes it difficult for the execution of the decision of the party tribunal. The Act determines there is a final and binding decision, and there are some not. While the existence formulation is open space for many interpretation. Beside, these types of conflict are supposed to be attached inside of Political Party Act not only placed on the explanation part".⁵⁷

⁵⁷Khairul Fahmi, 2015, "*Mahkamah Partai Politik*", Majalah GeoTIME, accessed on 26th 2016 December at 11.31 pm.

Several things made the existence of political party tribunal are not effective enough. First, the crucial things that often bring questions related to the existence of the political party tribunal is the decision of the political party tribunal that is final and binding. The identification efforts of the judicial philosophy that is contained in the decision of the political party tribunal which is final and binding can be defined as an effort to realize the legal certainty. The final nature of the decision of political party tribunal based on the desire to immediately realize the legal certainty for the justice seekers.⁵⁸ In Article 32 paragraph (5) it implied that “the decision of political party tribunal or other names that is final and binding internally in the conflict regarding to management”. If using grammatical interpretation, this article could be meant that the internally final and binding decision of tribunal only related to "conflict regarding the management." Meanwhile the decision of other five kinds of conflict are not final and binding and there is possibility to propose another legal effort. In other words, it can be assumed that the district court has authority to settle the intra party conflict when the intra party conflict settlement is not reached. If explained wider, district court only has an authority to investigate and try the intra party conflict regarding to:

1. Violation of political parties members
2. The dismissal without obvious reason
3. Abuse of power

⁵⁸ M. Anwar Rachman, 2016, *Op.Cit.*, p. 238.

4. Financial accountability
5. Objection against the political parties decision

Therefore, this formation is very impressed ambiguous and cause complications of the law in its implementation.

Second, on one side the decision of the political party tribunal is final and binding internally in the case of the conflict regarding the managements regulated on Article 32 paragraph (5) of Political Party Act 2011. But on the other side, the Article 33 paragraph (1) determines that "In the case of conflict settlement referred to Article 32 cannot be reached, the conflict settlement is done by the district court". This shows the existence of varying understanding and inconsistencies. The regulation in Article 32 and Article 33 of Political Party Act 2011 are *contraditio in terminis*.

As a "special court" in intra party conflict matters, for sure the decision of political party tribunal should be final and binding. If still there is a chance to propose a lawsuit into district court, it is really inappropriate.⁵⁹ While related to the type of conflict in the conflict regarding the management, based on to the interpretation of meaning, this article is not final and binding when the political party tribunal settles the intra party conflict. As the result, if the conflicting parties disagree with the decision, it is still possible to make an objections effort through the judicial mechanism.

⁵⁹*Ibid.*, p. 502.

It is also asserted by the experts, Saldi Isra when giving a description as the experts in the judicial review of the Political Party Act and the Administrative Court Act in the Constitutional Court with explanation as follows :

"The giving of authority on the intra political party settlement mechanism is still half-heart. On one side the formulation of Article 32 mentions the decision of the settlement of disputes over the management of the party is final and binding. On the other hand, Article 33 paragraph (1) of Act on Political Party thus attract back that an authority because of the decision of the tribunal can be reviewed to the court if settlement is not reached. The full authority of political parties tribunal to settle the management of party curtailed by the formulation of Article 33 paragraph (1) of Political Parties Act. The inconsistency is both the principle of the sovereignty of the political parties or other norms in the Political Parties Act will potentially cause the legal uncertainty that harm citizens".⁶⁰

Related to the true meaning of the phrase "*conflict settlement...not reached*", Firdaus in his capacity as an experts on the council of the district court of Central Jakarta, related to the conflict over the management of the United Development Party on Wednesday-Thursday, 6-7 May 2015, explained as follows :

"The competency of district court in settling down the intra party conflict only when in party tribunal is not reached. As has been described previously that conflict settlement is failed because of: *first*, the political party tribunal is not reach the deciding stage (there is no decision) *second*, the political party tribunal was arrived in deciding decision stagebut the parties are unsatisfied and does not accept the verdict."⁶¹

The true meaning as outlined by Firdaus on one side can be justified according to the meaning of norms formulated in Article 32 paragraph (5)

⁶⁰ Firdaus, "Mekanisme Penyelesaian...*Op.Cit.*,p.3.

⁶¹ Aturan Mahkamah Partai Dinilai Inkonsisten", www.hukumonline.com, accessed on 30th December 2016 at 11 am.

of Political Party Act related to the nature of the final and binding decision as long as the political party tribunal does not decide the decision (no decision). On the other hand, it is not argued that if the intra party conflict settlement submitted to the court only because the parties are unsatisfied with the verdict, because based on Article 32 paragraph (5) the nature of its decision is final and binding. It is also written by Anwar Rachman in his book that states: “the regulation in Article 33 paragraph (1) is contradicted to legal certainty principle. The phrase of “not reached” in this article is multi-interpretation. It may contain several meanings, such as: (a) The trial in political party tribunal is uncomplete. By means judge in political party tribunal is unsuccessful to take the decision, or (b) political party tribunal rejected to try and decide the conflict, or (c) conflicting parties are unsatisfied with the political party tribunal’ decision. Therefore with any reasons, when the decision is internally final and binding, then there should be no reason to bring the conflict into the court.

Supposedly there is no need to put intra party conflict settlement mechanism of political party through the court and reject the decision of political party tribunal as the complementary of intra party conflict settlement system. Since the main intention by establishing party tribunal is to more advancing internal democracy of political party, strengthen the spirit of institutionalization of political parties on the basis of democratic and accountable so that they can realize the structure and enhancements

of political parties in Indonesia as in line with the purpose on the formulation of Political Party Act.

Furthermore, bringing the conflict entering into court is not the competency of district court. There are only two matters that may be proposed through district court, namely unlawful act and breach of contract. While, civil lawsuit about objection of political party decision is administrative matter that belongs to Administrative Court. In order to reach the simple, fast and low cost settlement, it will be better to eliminate the regulation of Article 33 (1) of Political Party Act 2011. So the decision of political party tribunal is really final and binding.⁶² Political party tribunal is the highest court of political party. So it will be unappropriate to bring the cases into court.⁶³

Third, another crucial thing is in Article 32 paragraph (1) of Political Party Act stipulates that political party conflict shall be settled internally as regulated in the Articles of Association. The problem is that generally the Articles of Association does not provide a specific explanation about the procedural mechanism of the party tribunal. It can be traced from the various Articles of Association which do not provide a concrete and clear settlement mechanism so it may cause legal uncertainty. This makes the intra party conflict become long-lasting and even the endless on the settlement at the court level, as experienced by the Golkar Party and United Development Party. The lack of certain

⁶²M. Anwar Rachman, *Op.Cit.*,p.519.

⁶³*Ibid.*

procedural regulation will open a change for the intra political party to do arbitrariness. In addition, by the lack of regulation it causes a confusion for intra political party to functionate the political party tribunal. On this side of the ambiguity, legislator forces to settle the intra party conflict based on their (political party) Articles of Association only, without paying attention to the possibility impact. This model thus becomes the cause for conflicting parties to preferring the conflict settlement by judiciary process, because it is believed that the court provides legal certainty. Therefore, the existence of the political party tribunal for the conflicting members does not provide any benefits. This fact becomes the obstacles in the political party tribunal to run the authority, due to the mistrust of political parties in settling their own intra party conflict.

Therefore the interpretation problem of norm formulation on the existence of political party tribunal should be ended soon by revising the norms. It avoid any ambiguity in its application. It means that Political Party Act needs to be changed. The changes must be done toward strengthening the position and the authority, regulates the composition of political party tribunal membership more objectively and determine explicitly intra conflict settlement flow until the involvement of court in the intra party conflict settlement. By those steps it hopes that the effectiveness of intra party conflict settlement would be reached.

Imam Anshori⁶⁴ said that "the decision of party tribunal should be

⁶⁴Vice Chairman of Judicial Commission (2010-2015). He is also ex-parliament member (2004-

really final and binding. The state through the judicial or executive organs, only reinforces the decision tribunal. Thus the sovereignty and integrity belongs to the political parties. Its existence does not depend on the government as like what happened today. This also reduces the prolonged intra party conflict settlement mechanism".⁶⁵

In the writer's ideas, intra party conflict settlement of political parties by a political party tribunal or another name is better in order to maintain the independence of the political parties. Therefore, if the law maker wants taft, independent, and strong political parties, it should not put any intra party conflict settlement mechanism of political parties by court process, which it takes a long time and does not settle down the conflict due to the limitation in judiciary system in Indonesia.⁶⁶ Moreover, the problem will remain if it is assumed that the existence of political party tribunal as the complementary system of intra parties conflict settlement only.

2. Proposal for a Better Concept of Intra Party Conflict Settlement of Political Party in Indonesia

In a democratic political system, the existence of the political party tribunal is a reality that cannot be avoided. Since the party tribunal is the most realistic and rational tool for settling the intra party conflict in order to realize a portrait of independent and professional political parties. Only

2009).

⁶⁵ Mahkamah Partai Tak Bergigi, <https://www.tempo.co/read/kolom/2016/01/25/2358/mahkamah-partai-tak-bergigi>, accessed on 1st December 2016 at 8.29 am.

⁶⁶ M. Anwar Rachman, 2016, *Op.Cit.*,p.503.

independent and professional political party that are believed to be able to encourage the structure of a democratic state. Democracy is strongly needed, since it is believed as an important instruments which may guarantee the accountability of authority through the election. The quality of election is an important stage to determine the state holder, to promote the welfare of the citizens by creating a responsive policy, to allow the spread of decision-making and to facilitate a more effective participation of people.⁶⁷

In this subchapter, it would be proposed a better concept of intra party conflict settlement of political party in Indonesia in the future. Eventhough the presence of political party tribunal by Political Party Act is as a means of conflict resolution, but in fact it does not yet fulfill the requirement as stated by Political Party Act. This is due to the lack of clear regulation related to the position and its role in the Political Party Act. The importance position of political party tribunal in the political system, there is no choice than strengthening the position and the role of political party tribunal in the intra party conflict settlement of political parties. Accordingly, it is urgent to creating a more clear regulation on the intra party conflict settlement through political party tribunal. The strengthening of the intra party conflict settlement is important in order to ensure the process of maturity on the political parties as a vital element of democracy in the intra conflict settlement.

⁶⁷ Richard H. Pildes, 2004, The Constitutionalization of Democratic Politics, *Harvard Law Review*, Vol. 118:1, p. 13-14

Basically the establishment of the political party tribunal is to support the effectiveness of political parties function in a democratic state. The availability of intra party conflict settlement mechanism of political parties is considered as a way out of a variety of conflict of interest that often occurred in a political parties. The absence of conflict settlement mechanism will create the political parties unable to perform its function to reach a mature democracy. Thus, by establishing political party tribunal, will be able to answer the expectations of a society that wants the political parties are independent, professional and dignified. Being independent and professional political party may contribute in constructing a democratic order.

Theoretically, democracy literally requires a compromise in order to resolve the diversity and in order to preserve the unity in our nationhood and statehood. Hans Kelsen states that :

"One of the essence of democracy lies in whether or not there is a compromise which unites difference of opinion to determine an order for the basis of a country. The principle of compromise is the settlement of a problem (conflict) through the norm which is not entirely in accordance with the interests of one parties, not also completely contrary to the other party interests".⁶⁸

The sustainability of political party can be reached when political parties are able to inculcate the democratic values in the process of intra party conflict settlement mechanism. This democratic values are rooted from Pancasila and 1945 Constitution. The requirements to achieve this condition is nothing else than providing a clear regulation about the

⁶⁸ Hans Kelsen, 2006, *Teori Umum Tentang Hukum dan Negara*, Bandung, Nuansa dan Nusamedia, p. 407.

position and the role of political party tribunal in intra party conflict settlement of political parties. This is very important since there is an authority delegation given by the state to political party tribunal through Political Party Act which shall settle all forms of intra party conflicts. In other words, political party tribunal are given full authority by the State to conduct judiciary process for their intra party conflicts which has equal position to another judiciary organ.

Political Party Act 2011 put political party tribunal to run the function quasi judiciary. In fact the existence of political party tribunal is still not effective yet regarding intra party conflict settlement mechanism. Accordingly, as a result of the ambiguity, the conflicting parties tend to disobey or not respect to the decision of political party tribunal. In Article 32 (5) of Political Party Act 2011, stated that the decision of political party tribunal is final and binding for conflict regarding management conflict. It could be assumed that the decision of political party tribunal for another conflict which becomes the jurisdiction of political party tribunal⁶⁹ is not final and binding. It shows absurdity regulation which may cause any multi-interpretation. So, based on this research, it requires a revision for legislation by completing this regulation.

On one hand, Political Party Act 2011 stated that the decision is final and binding. On the other hand, the conflict can be done by the legal efforts into the court. The pattern of norms undermines the authority of

⁶⁹See explanation of Article 32 paragraph (1) Political Party Act 2011.

political party tribunal in running its role as a conflict settlement organ of political parties. Responding this problem, it can be proposed if the legislation only give full authority to the political party tribunal or another name, then the legislation should eliminate the space of conflict settlement on any institution. It is intended that the state and conflicting parties obey more to the law. Besides that the internal settlement is the best solution, because the internal conflict is the party itself which must be able to settle objectively and democratically.

Regulation in Article 33 paragraph (1) of Political Party Act 2011 needs to be eliminated in order to achieve a simple, quick and cheap conflict settlement and the conflicting parties can obtain legal certainty soon. This is also in line to make the existence of political party tribunal' decision is becoming trully final and binding.⁷⁰ The decision to open or close the opportunity of external mechanism depends on the Act. If the Act is consistent, supposedly the intra party conflict settlement stopped in internal mechanism. Political party tribunal is the highest political court. So it sounds impossible if the decision should be brought into the court.⁷¹

When the laws provide an opportunity for the court and cassation on the Supreme Court, the State is supposed not to give space on the party tribunal to settle the conflict or at least does not put word "final and binding" in Political Party Act. It is to avoid the overlapping of decision of the conflict settlement institutions which extremely possible to cause a

⁷⁰M. Anwar Rachman, 2016, *Op.Cit.*, p.519.

⁷¹*Ibid.*, p.516.

clash in deciding which law/decision that must be applied in the future.⁷²

The political party tribunal will only perform its function maximally if the conflict process is settled by internal mechanism.⁷³ In addition the Political Party Act 2011 commends the instrument of intra party conflict settlement mechanism of political parties by the Articles of Association. So it is no relevant anymore if the conflict is brought to the judiciary mechanism. Did the tribunal run the function of quasi judiciary? Thus, by its function the position of each decision of the political party tribunal is a legal product that must be obeyed by all functionaries and internal members as well as by externally must be respected by all parties including the state.

The purpose formation of the political party tribunal itself basically is to encourage the maturity of political parties, more than it is intended to provide justice for all parties affected by the decision making system in the intra party mechanism. Relating to this, it should be put forward the opinion of Jimly Asshiddiqie who expressed, as follows :

"Besides the Special Court institutions in legislation explicitly and officially is called as a court, today there are also many existence institutions grow and develop which are not mentioned explicitly as a court, but the institutions have the authority and also conduct judicial processes. Based on the legislation, these institutions are given the authority to examine and decide over a dispute or violation of law, and even the decision on ethics violations is final and binding as like as the court verdict which is "inkracht" generally. All of this is intended to provide justice for all parties

⁷²See Article 33 paragraph (1) of Political Party Act 2011

⁷³Bachtiar, *Op.Cit.*, p.8-9.

affected by the decision making system which is named by the state."⁷⁴

In line with Jimly's opinion, the party tribunal can be considered as the judiciary organ but nature is *quasi* judiciary. As a "Special Court" in intra party conflict settlement, for sure the decision of political party tribunal should be final and binding. If it still has opportunity to be brought into court, means the formulation name of "Political Party Tribunal" in Political Party Act is inappropriate.⁷⁵

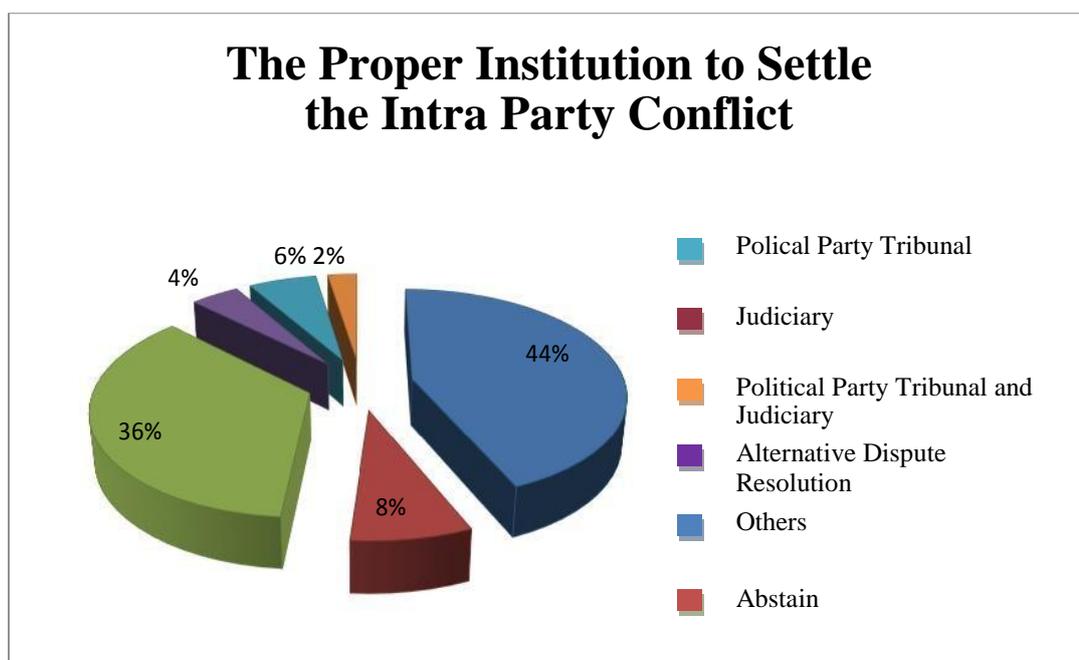
Looking at the position and the ideal role of the political party tribunal and its ambiguity norms, it is urgent for legislator to revise the Political Party Act 2011 specifically related to the completing regulation and strengthening of political party tribunal. In order to strengthen the political party tribunal, the idea to make the political party tribunal as the only intra conflict settlement channel should be considered. That is why Political Party Act should provide a clear and certain mechanism for intra party conflict settlement. Further, by giving full authority to political party tribunal to settle the intra party conflict settlement is in line with the independency and function of political party as conflict management and conflict management for society.⁷⁶ In other words, as a conflict

⁷⁴ Jimly Asshiddiqie, "Pengadilan Khusus", www.jimly.com, accessed on 15th January 2017 at 9.12 am.

⁷⁵The use of "Mahkamah" in judiciary in Indonesia or in overseas mostly for the highest level of judiciary, that is the Supreme Court and Constitutional Court. For the lower level of court in Indonesia it usually used term "Pengadilan Negeri" and "Pengadilan Tinggi". But in Malaysia term "Mahkamah" is also used for the high court. mahkamah militer telah dihapus diganti pengadilan militer dan pengadilan tinggi militer.

⁷⁶Jimly Asshiddiqie, 2006, Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi, *Jurnal Mahkamah Konstitusi Republik Indonesia*, Vol. 3, No. 4, December accessed on 13rd February at 7.35 a.m.

management, political party is functioned as aggregation of interest which distribute the various interests through political party. At the end, it will be inappropriate to bring intra party conflict entering into court which has a long process and does not settle the conflict since its limitation.⁷⁷ It could be emphasized that intra party conflict of political parties only be jurisdiction and competence of the political party tribunal and the decision is final and binding. It means that the conflict could not be brought into the court.



Source: The Research of Pusat Kajian Konstitusi Universitas Andalas
Figure 4.7

From the diagram, it could be seen that the strenghtening of

⁷⁷What is meant by limitation of judge is the limitation in terms of number of judge, as well as quality of judge who are expert in political issues. M. Anwar Ibrahim, *Op.Cit.*, p.503.

political party tribunal takes the major votes of respondent, which got 44%. This percentage puts political party tribunal as the only one mechanism in intra party conflict settlement, which means the existence of court in intra party conflict settlement is not needed anymore. Besides the aims to strengthen the internal mechanism and independence of political party, this also aims to reduce the burden of state.

In addition, based on this research the position of government also should be regulated clearly. In Political Party Act 2011, does not give any certain prohibition for government to not interfere political parties internally. Implicitly, Political Party Act 2011 only stated that the role of government is administrative only. So, regarding to intra party conflict settlement, in case of conflict management particularly the position of government is in the passive side. It means that the government waits until internal settlement mechanism (political party tribunal) or external mechanism is done.

The government should have political will. When both conflicting parties come to the government for asking legitimation, the government should reject. Since, naturally in one organization only has one management. Political will here also means to encourage the conflicting parties to settle down thier intra party conflict by their mechanism until it is really settled, not by interfering the process of settlement. Moreover, providing a constrain limitation for the government role in intra party conflict settlement process should be accompanied by the punishment. It

aims to avoid abuse of power.

Overall, the problems come since there is no clear regulation and it will also cause unclear settlement process. The existence of regulation naturally have to avoid any conflict, but since there is no detail regulation, it leads the conflict to happen for long time. So, nothing else to do beside the reformulation of mechanism and its regulation, clarifying the position and the role of government.

In this context, political parties seek for controlling the political conflict that happened in the community so that its development is not extravagant fairness. As a conflict management, it needs the maturity of political parties and made the political party tribunal as the only way to resolve conflict settlement mechanism. In other words, intra party conflict must be settled internally without the involvement of external state organs. It will become something absurd when political parties are unable to settle their intra party conflicts by internal mechanism. Moreover it will run the function of conflict management in the society. Therefore, it is time for all parties to alter the intra party conflict settlement paradigm of political parties to make the political party tribunal as the only conflict settlement mechanism. For and on behalf of democracy, it is time for the political party tribunal to strengthen the position and role for political parties.

The willingness to make the political party tribunal as the only intra

party conflict settlement must be followed by enactments of procedural law and the institutionalization of political party tribunal includes judge recruitment on the political party tribunal. This research proposes the revision on the Political Party Act 2011 to provide a clear procedural law as guideline to conduct the process of intra party conflict settlement through political party tribunal. It is really important since it will provide how political party tribunal exercise the authority. The needs of the political party tribunal' procedural law become important things to ensure that the authority on *quasi* judiciary function may works well as expected by Political Party Act 2011.

One of the issues of political party tribunal is related to the independence and impartiality of judge who tries and decides the intra party conflict. In the case of lay people in the political party tribunal are prohibited to put "*partisan*" because it will causes the decision tends to far away from neutrality and objectivity. To ensure the independence and impartiality of judges, Political Party Act needs to provide a clear regulation both the composition of the judges and the criteria required as judge of the political party tribunal. The Political Party Act also needs to provide regulation on how the mechanism of recruitment of judge. Or simply word, Political Party Act should provide a clear regulation, hopefully it will create an uniformity guideline for all political parties. If it is regulated under Political Party Act, it means that it will have legal force to be applied by all political parties. In addition, when Political

Party Acts provide all the regulation clearly, it is no need to be regulated in Articles of Association anymore.

In this research, regarding to the composition of political party tribunal, it could be considered to place the party cadres who have good qualification in the legal matters, great credibility and the impartiality. However, it also should be considered to put external people of political party such as the expert in the law, academician and social figure who have integrity and concern to the future of political parties in carrying out the function as an important element of democracy. So, the decision will be more objective.

Lastly the need to emphasize the execution of the verdict issued by the political party tribunal should be obeyed, either from conflicting parties or government party (ministry) in the form of imposing specific and strict punishment. In short, that the existence of political party tribunal decision can be understood and calculated in the intra party conflict settlement mechanism of political parties in Indonesia.