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Toward a Constitutional Balanced Dissolution Model: Reconciling Militant Democracy and Proportionality in Indonesia's Party Regulation

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Abstract

Research Objective: This study examines the normative and institutional weaknesses of Indonesia's constitutional framework for the dissolution of political parties and proposes a reconstructed model that balances democratic freedom with constitutional security. **Research Method:** Employing normative legal research combined with statutory, conceptual, comparative, and case-based approaches, the study analyses Indonesian constitutional provisions, statutes, and Constitutional Court decisions alongside dissolution practices in Germany, Spain, Turkey, and South Korea. **Results:** The prevailing Indonesian framework remains formalistic: it lacks measurable constitutional parameters, confines legal standing to the government, omits an enhanced evidentiary standard, and provides no graduated sanctions short of dissolution, corroborated by the Constitutional Court's two-decade non-use of this authority and the 2021–2025 case of a party linked to a banned terrorist network, resolved by merger rather than judicial review. Comparative practice, illustrated by Germany's 2025–2026 AfD proceedings, Turkey's protracted HDP/DEM Party closure case, and South Korea's 2024 martial law crisis, shows mature democracies increasingly treat dissolution as an "*ultimum remedium* governed by concrete-threat thresholds, proportionality testing, and tiered constitutional sanctions. **Findings and Implications:** These gaps expose Indonesia's mechanism to under-enforcement toward coalition partners and selective enforcement against opponents, leaving it ill-equipped for democratic backsliding, systemic political corruption, and digital disinformation. **Conclusion:** The study proposes the Constitutional Balanced Party Dissolution Model (CBPDM): a clear-

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and-present constitutional danger standard, multi-layer legal standing, an enhanced standard of proof, graduated constitutional sanctions, and an expanded guardianship role for the Constitutional Court. **Contribution:** The model offers an original theoretical synthesis linking militant democracy, constitutional security, and proportionality theory into an operational reform agenda for Indonesian constitutional law and comparative democratic-protection scholarship. **Limitations and Suggestions:** As a normative-comparative study, it does not empirically test institutional implementation; future socio-legal and empirical research should examine how the proposed model performs under actual political and technological pressures on democratic institutions.

Introduction

Constitutional democracy in the twenty-first century faces growing tension between expanding political freedoms and the weakening of the institutions that protect them. Contemporary constitutionalism recognizes freedom of association, freedom of expression, and the right to political participation as fundamental rights that the state must uphold. However, democracies face increasing challenges from political actors who use democratic mechanisms to undermine and eventually dismantle the democratic system. This process, known as democratic backsliding, involves the gradual decline of democratic quality through weakened institutions, reduced rule of law, restricted civil liberties, and the acceptance of practices that run counter to constitutional values.[1] As a result, debate has revived over how far a democratic state can go in defending itself through legal means without jeopardizing its own legitimacy.

Political parties play a central role in this discussion; they are more than private associations because they serve important constitutional functions, such as representing interests, recruiting political leaders, forming governments, and connecting citizens with the state. For this reason, most democratic constitutions strongly protect the right to form and operate political parties as part of the freedom of association. However, this protection is not absolute. If a party's actions, goals, or ideology threaten the constitution, democratic standards, human rights, or the state's integrity, its dissolution may be justified, provided it meets the requirements of legality, urgent social need, and strict proportionality.[2]

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[1] Licia Cianetti and Seán Hanley, "The End of the Backsliding Paradigm," *Journal of Democracy* 32, no. 1 (2021): 66–80, https://doi.org/10.1353/jod.2021.0001; Sebastian Hellmeier et al., "State of the World 2020: Autocratization Turns Viral," *Democratization* 28, no. 6 (August 18, 2021): 1053–74, https://doi.org/10.1080/13510347.2021.1922390; Melis G. Laebens and Anna Lührmann, "What Halts Democratic Erosion? The Changing Role of Accountability," *Democratization* 28, no. 5 (July 4, 2021): 908–28, https://doi.org/10.1080/13510347.2021.1897109.

[2] Lise Rakner, "Don't Touch My Constitution! Civil Society Resistance to Democratic Backsliding in Africa´s Pluralist Regimes," *Global Policy* 12, no. S5 (July 31, 2021): 95–105, https://doi.org/10.1111/1758-5899.12991; Jon Kingzette et al., "How Affective Polarization Undermines Support for Democratic Norms," *Public Opinion Quarterly* 85, no. 2 (October 21, 2021): 663–77, https://doi.org/10.1093/poq/nfab029.

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This debate has become more urgent as democracies face increasing political extremism, radical ideologies, anti-constitutional populism, and groups that try to undermine democracy from within. Experience shows that democracies usually do not fall because of military coups or revolutions, but through a gradual process in which anti-democratic forces take control of electoral systems. This understanding underpins the idea of militant democracy, which allows a democratic state to use legal measures to protect itself from those who use democratic freedoms to destroy democracy.[3] However, the use of militant democracy must always respect human rights and the rule of law.[4]

Indonesia, as a constitutional democracy, recognizes the important role of political parties in its system. The 1945 Constitution protects freedom of association and political participation, and gives the Constitutional Court (*Mahkamah Konstitusi*, MK) the sole authority to decide on the dissolution of political parties to protect state ideology, the constitution, and the democratic system. This setup strives to balance citizens' political rights with the state's need to preserve constitutional security. However, Indonesia's legal framework for dissolving parties still has major conceptual and normative weaknesses. The current rules focus mainly on procedures, while the criteria for what counts as a real threat to constitutional democracy are not clearly defined. In addition, because only the government can request dissolution, concerns remain about independence, accountability, and effective oversight of political parties.[5]

Today, threats to constitutional order rarely involve armed rebellion. Instead, they take the form of disinformation, infiltration of democratic institutions, election manipulation, unclear political funding, and widespread political corruption.[6] Because of

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[3] Carlo Invernizzi Accetti and Ian Zuckerman, "What's Wrong with Militant Democracy?," *Political Studies* 65, no. 1_suppl (April 9, 2017): 182–99, https://doi.org/10.1177/0032321715614849; Giovanni Capoccia, "Militant Democracy: The Institutional Bases of Democratic Self-Preservation," *Annual Review of Law and Social Science* 9, no. 1 (November 3, 2013): 207–26, https://doi.org/10.1146/annurev-lawsocsci-102612-134020; Antonios Kouroutakis, "Against Militant Democracy," *German Law Journal* 26, no. 6 (July 4, 2025): 979–97, https://doi.org/10.1017/glj.2025.10164.

[4] Invernizzi Accetti and Zuckerman, "What's Wrong with Militant Democracy?"; ULRICH WAGRANDL, "Transnational Militant Democracy," *Global Constitutionalism* 7, no. 2 (July 11, 2018): 143–72, https://doi.org/10.1017/S2045381718000084; Jan-Werner Müller, "Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy," *Annual Review of Political Science* 19, no. 1 (May 11, 2016): 249–65, https://doi.org/10.1146/annurev-polisci-043014-124054.

[5] Muhammad Mutawalli Mukhlis, Zulhilmi Bin Paidi, and Wiranti Wiranti, "The Interests of Democracy or the Eradication of Corruption: The Dissolution of Political Parties in a Review of Law and Practice in Other Countries," *Constitutional Law Review* 4, no. 1 (May 31, 2025): 70–97, https://doi.org/10.30863/clr.v4i1.5632; Nurullah Nurullah, M. Hadin Muhjad, and Erlina Erlina, "Kewenangan Mahkamah Konstitusi Dalam Pembubaran Partai Politik Di Indonesia," JURNAL USM LAW REVIEW 8, no. 3 (November 23, 2025): 1890–1902, https://doi.org/10.26623/julr.v8i3.12770; Hasir Budiman Ritonga, "Implikasi Putusan Mahkamah Konstitusi Terhadap Pembubaran Partai Politik Di Indonesia," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 4, no. 2 (December 30, 2018): 227–39, https://doi.org/10.24952/el-qanuniy.v4i2.2390.

[6] Rubén Arcos et al., "Responses to Digital Disinformation as Part of Hybrid Threats: A Systematic Review on the Effects of Disinformation and the Effectiveness of Fact-

these changes, the legal framework for dissolving parties needs to adapt to the new challenges facing democracy. Party dissolution should not be seen only as a tool for the state to suppress political groups. It should be an element of a broader constitutional approach that aims to protect democracy, uphold the rule of law, respect human rights, and maintain constitutional supremacy.

Most academic discussions about party dissolution in Indonesia focus on three main topics: the Constitutional Court's exclusive authority to decide dissolution cases, debates about the government's sole right to file dissolution petitions, and comparisons between Indonesia's system and those in other countries, especially Germany.[7] Although these studies have helped develop Indonesian constitutional law, they mostly analyze procedures and institutional authority. As a result, the link between protecting democratic freedom and guaranteeing constitutional security has not been explored in depth.[8]

Based on the existing literature, at least three main research gaps remain. First, there is no complete model that combines militant-democracy theory, the principle of proportionality, and the idea of constitutional security in Indonesia's legal framework for party dissolution. Second, most previous research has focused on procedures and institutions, but has not addressed how new threats like democratic backsliding, political corruption, digital disinformation, and infiltration of institutions should be reflected in constitutional rules for dissolution. Third, it offers no institutional design that improves the dissolution process while still protecting freedom of association and political pluralism, which are necessary for a democratic state.

In order to address these gaps, this study suggests a new constitutional framework for dissolving political parties in Indonesia that reconciles democratic freedom with constitutional security. The model redefines the grounds for dissolution, sets clear

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Checking/Debunking," *Open Research Europe* 2 (January 13, 2022): 8, https://doi.org/10.12688/openreseurope.14088.1; Mikael Wigell, "Democratic Deterrence: How to Dissuade Hybrid Interference," *The Washington Quarterly* 44, no. 1 (January 2, 2021): 49–67, https://doi.org/10.1080/0163660X.2021.1893027; Michael L. Miller and Cristian Vaccari, "Digital Threats to Democracy: Comparative Lessons and Possible Remedies," *The International Journal of Press/Politics* 25, no. 3 (July 11, 2020): 333–56, https://doi.org/10.1177/1940161220922323.

[7] Anindita Krisma Apriliyanti, "LEGAL STANDING WARGA NEGARA INDONESIA DALAM PEMBUBARAN PARTAI POLITIK PERSPEKTIF HAM ISLAM," *JIL : Journal of Indonesian Law* 3, no. 1 (September 14, 2022): 82–104, https://doi.org/10.18326/jil.v3i1.82-104; I Gede Agus Kurniawan, "The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties," *Jurnal Akta* 9, no. 1 (April 26, 2022): 104, https://doi.org/10.30659/akta.v9i1.20970.

[8] Firmansyah Firmansyah and Budiyono Budiyono, "The Role of Constitution in a Democratic System and Human Rights Protection in Indonesia," *Pancasila and Law Review* 5, no. 1 (February 17, 2025): 39–46, https://doi.org/10.25041/plr.v5i1.3659; Abdul Latif, Muhammad Dzul Ikram, and Marta Satria Putra, "The Dynamics of Constitutional Law and The Challenges of Democratic Practices in Indonesia," *Advances In Social Humanities Research* 3, no. 3 (March 26, 2025): 186–96, https://doi.org/10.46799/adv.v3i3.357; Husni Thamrin et al., "THE STATE OF LAW AND DEMOCRACY: THE REALITY OF STATE IN THE CONSTITUTIONAL SYSTEM IN INDONESIA," *Awang Long Law Review* 8, no. 2 (January 16, 2026): 514–17, https://doi.org/10.56301/awl.v8i2.2028.

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constitutional criteria based on a *clear and present danger*, *raises the standard of evidence using* the principle of proportionality, and reviews the rules for legal standing and judicial oversight by the Constitutional Court. The aim is to contribute to constitutional law scholarship and recommend reforms to Indonesia's party-dissolution system to make it more accountable, democratic, and consistent with the principles of a constitutional state.

Methods

This study uses normative legal research (*doctrinal research*), which examines law as a coherent system of norms encompassing principles, rules, statutory provisions, and judicial decisions relevant to the object of inquiry.[9] Four complementary approaches are combined. The *statutory approach reviews* the 1945 Constitution, Law No. 2 of 2008 on Political Parties as amended by Law No. 2 of 2011, and Law No. 24 of 2003 on the Constitutional Court as last amended by Law No. 7 of 2020. The *conceptual approach* draws on theories of militant democracy, constitutional security, constitutionalism, and proportionality to interpret the substantive weaknesses of the current framework. The *comparative approach studies* the practice of party dissolution in Germany, Spain, Turkey, and South Korea, selected because each represents a distinct constitutional strategy ranging from a strict concrete-threat standard to a security-oriented and a frequency-based model, thereby enabling identification of best constitutional practices transferable to the Indonesian context. The *case approach* analyses Indonesian Constitutional Court decisions, including Decision No. 53/PUU-IX/2011 and Decision No. 16/PUU-XXII/2024, to trace how existing norms have been interpreted and applied.

Legal materials were drawn from primary sources (the Constitution, statutes, and court decisions), secondary sources (books, peer-reviewed journal articles, and Venice Commission guidelines), and tertiary sources (legal dictionaries and encyclopaedic references). Analysis proceeded qualitatively through grammatical, systematic, historical, teleological, and comparative legal interpretation. The analytical process began by identifying normative weaknesses in Indonesia's present framework, followed by an evaluation of comparative constitutional practice to distil best practices, and concluded with a synthesis of this evidence with militant-democracy theory, the principle of proportionality, constitutionalism, and the concept of constitutional security to formulate a reconstructed model that is more democratic, more accountable, and more consistent with the rule of law.

To ensure analytical validity, I triangulated sources by cross-checking consistency among constitutional provisions, statutory instruments, judicial decisions, scholarly doctrine, and comparative constitutional practice.[10] The resulting analysis was further

[9] Stefan Theil, "Carefully Tailored: Doctrinal Methods and Empirical Contributions," *Oxford Journal of Legal Studies* 45, no. 4 (December 10, 2025): 1047–75, https://doi.org/10.1093/ojls/gqaf029; Andin Wisnu Sudibyo and Megawati Barthosr, "Advancing Regulations and Harmonizing Laws to Ensure Fair and Transparent Legal Certainty in Bribery and Gratification Cases," *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi* 2, no. 3 (August 7, 2025): 175–85, https://doi.org/10.62383/federalisme.v2i3.1050.

[10] Theil, "Carefully Tailored: Doctrinal Methods and Empirical Contributions"; Florian G. Kern, "The Trials and Tribulations of Applied Triangulation: Weighing Different Data Sources," *Journal of Mixed Methods Research* 12, no. 2 (April 24, 2018): 166–81,

tested for logical coherence of legal argumentation and agreement with universal principles of the democratic Rechtsstaat, constitutional supremacy, human-rights protection, and the independence of constitutional adjudication. On this basis, the reconstructed model was intended to provide sufficient academic grounding to guide future reform of Indonesia's constitutional law governing the dissolution of political parties.[11]

Results and Discussion

The Evolution of Indonesia's Constitutional Framework for Party Dissolution

Political party dissolution is among the most sensitive constitutional instruments available to a democratic state, because it intersects directly with freedom of association, freedom of expression, and citizens' right to participate in government.[12] In modern democracies, political parties are not treated as purely private organizations but as public institutions performing constitutional functions in political representation, leadership recruitment, government formation, and the realization of popular sovereignty. Dissolution therefore cannot be understood as an ordinary administrative sanction; it is a constitutional act permissible only where a party's continued existence genuinely threatens the survival of the democratic *rechtsstaat*, and it must be subject to strict judicial scrutiny. [13]

Indonesia's constitutional trajectory on this question shows a considerable paradigm shift. During the parliamentary-democracy period (1945–1959), freedom to establish political parties was treated as a manifestation of post-independence democratic aspiration, and no detailed constitutional mechanism for dissolution was

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https://doi.org/10.1177/1558689816651032; Sanne Taekema, "Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship," *Law and Philosophy* 40, no. 1 (February 14, 2021): 33–66, https://doi.org/10.1007/s10982-020-09388-1.

[11] Fathul Hamdani and Ana Fauzia, "Legal Discourse: The Spirit of Democracy and Human Rights Post Simultaneous Regional Elections 2020 in the Covid-19 Pandemic Era," *Lex Scientia Law Review* 5, no. 1 (May 30, 2021), https://doi.org/10.15294/lesrev.v5i1.45887; Zachary Elkins, "Militant Democracy and the Pre-Emptive Constitution: From Party Bans to Hardened Term Limits," *Democratization* 29, no. 1 (January 2, 2022): 174–98, https://doi.org/10.1080/13510347.2021.1988929; Vasileios Adamidis, "Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness," *Politics* 44, no. 3 (August 23, 2024): 386–99, https://doi.org/10.1177/02633957211041444.

[12] Khalid Idris Nuhu, "The Legal Implication of Political Defection on Nigeriaâ€™s Democracy," *Sriwijaya Law Review*, July 31, 2021, 247–61, https://doi.org/10.28946/slrev.Vol5.Iss2.1060.pp247-261.

[13] Emil Husted, Mona Moufahim, and Martin Fredriksson, "Political Parties and Organization Studies: The Party as a Critical Case of Organizing," *Organization Studies* 43, no. 8 (August 30, 2022): 1327–41, https://doi.org/10.1177/01708406211010979; Anil Kumar Gupta, Hari P. Dhungana, and Bishnu Prasad Lamsal, "Political Parties' Accountability to the Public in Nepal: What Factors Affect It?," *Heliyon* 11, no. 1 (January 2025): e41312, https://doi.org/10.1016/j.heliyon.2024.e41312; Hasto Kristiyanto, Satya Arinanto, and Hanief Saha Ghafur, "Institutionalization and Party Resilience in Indonesian Electoral Democracy," *Heliyon* 9, no. 12 (December 2023): e22919, https://doi.org/10.1016/j.heliyon.2023.e22919.

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developed, since the political system's primary orientation was expanding mass political participation. [14] This produced a highly plural but fragmented party system, showing that freedom, without mechanisms to protect governmental effectiveness, can itself generate constitutional instability.

A fundamental change occurred under Guided Democracy, when the state prioritized political stability above all else and dissolution shifted from a judicial to a predominantly political mechanism, with the executive enjoying wide discretion to determine whether a party contradicted the national interest or state ideology. This experience illustrates that party dissolution absent judicial control risks becoming an instrument of power consolidation rather than a mechanism of democratic protection. A comparable pattern persisted through the New Order, in which centralized simplification of the party system, though framed around national stability and economic development, produced an unbalanced political competition and a procedural rather than substantive democracy.[15]

The 1998 Reform era fundamentally transformed the relationship between the state and political parties. The amended 1945 Constitution affirmed Indonesia as a democratic *rechtsstaat* guaranteeing freedom of association, assembly, and expression, while recognizing political parties as a foundation of constitutional democracy.[16] Crucially, the amendment also transferred authority over party dissolution from the executive branch to the Constitutional Court, signaling a shift toward what might be called *judicialized democracy*, a design in which an independent judicial body, rather than the executive, safeguards the balance between political rights and constitutional security.

This institutional change, however, has not been accompanied by a corresponding update to substantive norms. The existing framework still assigns the government sole authority to dissolve a party, placing the effectiveness of constitutional safeguards entirely in the hands of executive political will. If the government has a political interest in a party's continuation, such as being a coalition partner, it might simply choose not to act; alternatively, with insufficient oversight, it can wield the same monopoly selectively against opposition parties. These situations reveal that the current legal structure does not fully reflect the checks-and-balances system that is fundamental to a democratic

[14] Greg Barton, Ihsan Yilmaz, and Nicholas Morieson, "Authoritarianism, Democracy, Islamic Movements and Contestations of Islamic Religious Ideas in Indonesia," *Religions* 12, no. 8 (August 13, 2021): 641, https://doi.org/10.3390/rel12080641; Kristiyanto, Arinanto, and Ghafur, "Institutionalization and Party Resilience in Indonesian Electoral Democracy."

[15] Barton, Yilmaz, and Morieson, "Authoritarianism, Democracy, Islamic Movements and Contestations of Islamic Religious Ideas in Indonesia"; Kristiyanto, Arinanto, and Ghafur, "Institutionalization and Party Resilience in Indonesian Electoral Democracy."

[16] Dodik Ridho Nurrochmat et al., "Transformation of Agro-Forest Management Policy under the Dynamic Circumstances of a Two-Decade Regional Autonomy in Indonesia," *Forests* 12, no. 4 (March 31, 2021): 419, https://doi.org/10.3390/f12040419; Jonathan Chen, "Representing Chinese Indonesians: Pribumi Discourse and Regional Elections in Post-Reform Indonesia," *Journal of Current Southeast Asian Affairs* 41, no. 1 (April 29, 2022): 59–87, https://doi.org/10.1177/18681034211036716.

rechtsstaat.[17] Overall, Indonesia's constitutional evolution shows a genuine, but only partial, transition from a politics of stability toward constitutional democracy: institutional reform has succeeded in establishing judicial review, but has not yet produced adequate constitutional standards for the grounds of dissolution, the mode of proof, or the balance between democratic freedom and constitutional security.[18]

This partial transformation isn't merely theoretical; it is empirically evident in the Constitutional Court's docket. More than two decades after acquiring exclusive jurisdiction over party dissolution, the Court has neither received nor adjudicated a single dissolution petition.[19] This inactivity is striking precisely because Indonesia has, in the same period, faced at least one case squarely resembling the kind of threat the mechanism was designed to address. In November 2021, the leadership of the newly formed Partai Dakwah Rakyat Indonesia (PDRI), including its chairman, Farid Okbah, was arrested and investigated by the counter-terrorism unit Densus 88 on allegations of leadership ties to the banned Jemaah Islamiyah network, with police asserting that the party had been conceived partly as a legitimate political vehicle to shelter the network's members.[20]Rather than being tested through the constitutional dissolution mechanism envisaged by Article 24C, the party's political life ended through an entirely extrajudicial route. After failing to complete its administrative registration with the Ministry of Law and Human Rights, it was formally absorbed into Partai Ummat through a voluntary merger announced on 16 March 2025.[21]

Whatever the eventual legal merits of the underlying allegations, which the party's leadership has publicly disputed, the episode is instructive precisely because it shows how, absent clear constitutional parameters and standing beyond the government, a case implicating the core rationale for party dissolution can be absorbed and resolved through informal political and bureaucratic channels rather than through the independent judicial

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[17] Jeremy Webber, "A Democracy-Friendly Theory of the Rule of Law," *Hague Journal on the Rule of Law* 16, no. 2 (August 19, 2024): 339–74, https://doi.org/10.1007/s40803-024-00240-5; Magdalena Solska, "Polarization and Rule of Law Crisis—Insights from Poland," *Zeitschrift Für Vergleichende Politikwissenschaft* 19, no. 2 (April 2, 2025): 201–16, https://doi.org/10.1007/s12286-025-00630-5.

[18] Nufikha Ulfah, Arofah Minasari, and Yayuk Hidayah, "Actualization of Pancasila in The Implementation of Ethical Democracy in The Global Era," *Metafora: Education, Social Sciences and Humanities Journal* 5, no. 1 (July 7, 2021): 1, https://doi.org/10.26740/metafora.v5n1.p1-10; M. Lutfi Chakim, "Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices," *International Journal for Court Administration* 12, no. 1 (March 11, 2021), https://doi.org/10.36745/ijca.308.

[19] Ulfah, Minasari, and Hidayah, "Actualization of Pancasila in The Implementation of Ethical Democracy in The Global Era"; Chakim, "Organizational Improvement of the Indonesian Constitutional Court: Reflections on Appointment, Supervision, and Dismissal of Justices."

[20] Mohammad Zaki Arrobi, "The Making of Islamist-Inspired Terrorism and It's Counter-Terrorism in Indonesia," *Politik Indonesia: Indonesian Political Science Review* 3, no. 2 (July 15, 2018): 217–38, https://doi.org/10.15294/ipsr.v3i2.13673.

[21] CNN Indonesia, "Partai Dakwah Besutan Farid Okbah Dalam Proses Urus Izin Pemerintah," 2021, https://www.cnnindonesia.com/nasional/20211117101457-32-722263/partai-dakwah-besutan-farid-okbah-dalam-proses-urus-izin-pemerintah.

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scrutiny the Constitution assigns to the Mahkamah Konstitusi. This is exactly the kind of *under-enforcement* risk identified above: not because the government acted in bad faith, but because the current design gives it no clear incentive, and no other institution any standing, to bring a borderline case before the Court at all.[22]

Normative, Institutional, and Constitutional Weaknesses

The analysis detects four interrelated weaknesses in Indonesia's current legal architecture. The first, and most fundamental, is the absence of clear constitutional parameters defining the grounds for dissolution. Article 24C of the 1945 Constitution vests the Constitutional Court with authority over dissolution cases, while substantive grounds are left to statute; yet the statutory formulation "contrary to the Constitution" or "contrary to Pancasila" provides no measurable indicator.[23] Such open-textured language invites expansive interpretation and generates legal uncertainty. In contrast, restrictions on constitutional rights in a democratic *Rechtsstaat* should be formulated with sufficient clarity to be predictable and to prevent abuse of state authority. By contrast, jurisdictions such as Germany require proof not only of an anti-constitutional aim but also of a party's *concrete capability* to realize that aim, an appreciably more precise and proportionality-sensitive threshold.[24]

The second weakness concerns the design of legal standing, which currently rests exclusively with the government. Although this design was intended to prevent the dissolution mechanism from becoming a tool of inter-party political competition, the analysis shows that this monopoly instead generates a new checks-and-balances problem: because the effectiveness of constitutional protection depends entirely on executive political will, the government may decline to petition against a coalition partner suspected of undermining the constitution (*under-enforcement*), while the same monopoly, absent adequate safeguards, risks being deployed selectively against political opponents (*selective enforcement*).[25]

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[22] Tom Gerald Daly, "Charting a Way Forward? Post-Juristocracy, Democratic Decay, and the Limits of Gardbaum's Valuable Theory," *International Journal of Constitutional Law* 18, no. 4 (December 31, 2020): 1474–82, https://doi.org/10.1093/icon/moaa099.

[23] Daly; Priyo Handoko and Anis Farida, "In the State Administration System of Indonesia: No Space for Khilafah!," *HTS Teologiese Studies / Theological Studies* 77, no. 4 (July 5, 2021), https://doi.org/10.4102/hts.v77i4.6510; Barton, Yilmaz, and Morieson, "Authoritarianism, Democracy, Islamic Movements and Contestations of Islamic Religious Ideas in Indonesia."

[24] Jana Janderová and Petra Hubálková, "Legal Certainty – Protected Values and Partial Objectives: The Case of the Czech Republic," *Central European Public Administration Review* 19, no. 1 (May 30, 2021): 63–82, https://doi.org/10.17573/cepar.2021.1.03; Martin van Staden, "Constitutional Rights and Their Limitations: A Critical Appraisal of the COVID-19 Lockdown in South Africa," *African Human Rights Law Journal* 20, no. 2 (March 23, 2021): 1–28, https://doi.org/10.17159/1996-2096/2020/v20n2a6.

[25] Luciano Da Ros and Matthew M. Taylor, "Checks and Balances: The Concept and Its Implications for Corruption," *Revista Direito GV* 17, no. 2 (2021), https://doi.org/10.1590/2317-6172202120; Elizabeth Dávid-Barrett, "State Capture and Development: A Conceptual Framework," *Journal of International Relations and Development* 26, no. 2 (June 23, 2023): 224–44, https://doi.org/10.1057/s41268-023-00290-6.

The third weakness is the lack of an elevated standard of proof for dissolution proceedings. Because dissolution is the most serious restriction on freedom of association under Indonesian constitutional law, procedural law should require a higher evidentiary standard than in typical constitutional cases. Currently, no such standard is in place, which risks inconsistent rulings and damages the credibility of future dissolution decisions.[26] The fourth weakness is the all-or-nothing approach of the available sanction: currently, a party must either persist or be completely dissolved, with no intermediate, proportionate measures like suspending state funding, restricting activities, requiring organizational reform, or increasing supervision before reaching dissolution.[27] A graduated sanction regime would allow the state to protect democracy without immediately extinguishing the constitutional rights of a party's millions of members and voters, a design more consistent with the proportionality principle in human-rights law.[28] These four weaknesses do not occur in isolation; rather, they reflect a shared fundamental paradigm. Indonesia's current framework stays oriented toward *state security*, protection of state ideology, and territorial integrity. In contrast, contemporary constitutional theory increasingly demands protection of *constitutional security*: the continuity of democratic institutions, judicial independence, free and fair elections, and citizens' constitutional rights.[29]

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[26] Irene Domenici, Christian Günther, and Ulrich Becker, "Constructing Effectiveness as a General Legal Principle of Public Healthcare Systems: Comparative Insights from France, Germany, and England," *Health Economics, Policy and Law* 21, no. 2 (April 4, 2026): 137–55, https://doi.org/10.1017/S1744133126100371; Oriola Sallavaci, "Algorithms on Trial: Does Evaluative Probabilistic Reporting of Forensic Evidence Infringe the Presumption of Innocence?," *Forensic Science International: Synergy* 11 (December 2025): 100591, https://doi.org/10.1016/j.fsisyn.2025.100591.

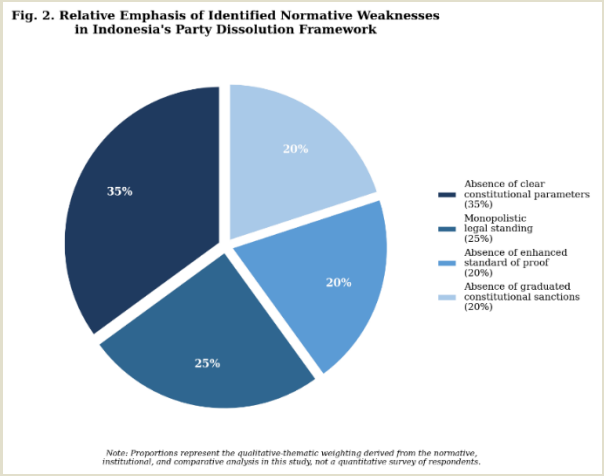
[27] V. V. Dzhuhan, "Suspension of Political Parties: Ukrainian Realities and the Experience of the Baltic States," *Analytical and Comparative Jurisprudence* 1, no. 6 (December 10, 2025): 155–60, https://doi.org/10.24144/2788-6018.2025.06.1.23; Uwe Backes, "Banning Political Parties in a Democratic Constitutional State: The Second NPD Ban Proceedings in a Comparative Perspective," *Patterns of Prejudice* 53, no. 2 (March 15, 2019): 136–51, https://doi.org/10.1080/0031322X.2019.1572275; James Hogan, "Analyzing The Risk Thresholds For Banning Political Parties After NPD II," *German Law Journal* 23, no. 1 (February 10, 2022): 97–116, https://doi.org/10.1017/glj.2022.1.

[28] Vanya Valkadinova, "The Principle of Proportionality in the Application of Sanctions and Other Measures of State Coercion According to Bulgarian Legislation and European Union Law," *Zbornik Radova Pravnog Fakulteta Nis* 57, no. 79 (2018): 181–96, https://doi.org/10.5937/zrpfni1879181V; Bogdan Iancu, "Militant Democracy and Rule of Law in Three Paradoxes: The Annulment of the Romanian Presidential Elections," *Hague Journal on the Rule of Law*, April 7, 2025, https://doi.org/10.1007/s40803-025-00245-8; Ulrich Sedelmeier, "Political Safeguards against Democratic Backsliding in the EU: The Limits of Material Sanctions and the Scope of Social Pressure," *Journal of European Public Policy* 24, no. 3 (March 9, 2017): 337–51, https://doi.org/10.1080/13501763.2016.1229358.

[29] Sergei Yur'evich Poyarkov, "National Security in the Context of the Transformation of Modern Constitutionalism: From Declarative to Institutionalization," *Национальная Безопасность / Nota Bene*, no. 3 (March 2025): 28–46, https://doi.org/10.7256/2454-0668.2025.3.74903; Paryanto Paryanto et al., "Democratic Regression and the Rise of Electoral

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Figure 1 offers an illustrative synthesis of the relative emphasis these four weaknesses receive in the normative, institutional, and comparative study conducted in this study.



This study's period in Indonesia highlighted the importance of a broader, institution-centered view of constitutional security. On 20 August 2024, the Constitutional Court issued Decision No. 60/PUU-XXII/2024 and Decision No. 70/PUU-XXII/2024, which relaxed party-coalition thresholds for regional-head nominations and clarified age requirements for candidates. Shortly after, the House of Representatives began drafting legislation to counter these rulings instead of enforcing them, leading to nationwide protests under the slogan "Peringatan Darurat" (Emergency Warning). Public pressure eventually compelled the House to drop the proposed bill.[30]

The episode did not directly pertain to party dissolution. However, it exemplifies the diffuse, procedurally "legal" manner of democratic erosion that this study associates with democratic backsliding: an elected legislature attempting to neutralize a constitutional court's ruling through ordinary lawmaking rather than through overt defiance, thereby leaving formal institutions ostensibly intact while undermining their substantive authority. Given that Indonesia's existing dissolution framework is calibrated solely to detect conventional, ideology-based threats to the constitutional order, it would not practically address this form of institutional erosion, even if it were somehow involved in a future dissolution case. This underscores the necessity for constitutional parameters that are sufficiently broad to encompass threats associated with backsliding, alongside

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Illiberalism in Indonesia: A Multi-Dimensional Analysis (1998-2024)," *Jurnal Civics: Media Kajian Kewarganegaraan* 23, no. 1 (April 2, 2026): 286–300, https://doi.org/10.21831/jc.v23i1.94824; Ahmad Sahide and Yenis Contesa, "What's Behind Democratic Backsliding? A Comparative Study of Indonesia, Tunisia, and Turkey," *Czech Journal of International Relations*, April 14, 2026, https://doi.org/10.32422/cjir.1883.

[30] Marlina Flassy, Usman Idris, and M. Zaenul Muttaqin, "IMPLEMENTING CONSTITUTIONAL COURT DECISIONS: CASE STUDY OF THE REVISION OF THE 2024 REGIONAL HEAD ELECTION LAW IN INDONESIA," PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH 10, no. 1 (March 15, 2025), https://doi.org/10.22373/petita.v10i1.732; Nur Rikha Maulida and Latifah Anwar, "Emergency Warning After the Constitutional Court Decision on the 2024 Regional Elections: Maintaining Political Stability in the Hadis Review," AMK : *Abdi Masyarakat* UIKA 4, no. 2 (June 16, 2025): 84–94, https://doi.org/10.32832/amk.v4i2.2675.

traditional threats.[31]

As Figure 1 illustrates, the absence of clear constitutional parameters appears as the most consequential weakness identified in this analysis (35 percent), followed by the monopolistic design of legal standing (25 percent), and, in roughly equal measure, the absence of an enhanced standard of proof and the absence of graduated constitutional sanctions (20 percent each). This distribution is not derived from a quantitative survey but reflects a qualitative weighting of how frequently and centrally each weakness is treated across the normative, institutional, and comparative literature examined; it serves as a heuristic device to orient the reconstruction proposed rather than an empirical measurement.

Comparative Study of Party Dissolution Models and Their Relevance for Indonesia

No single universal model governs the dissolution of political parties among constitutional democracies; each jurisdiction designs its mechanism according to its own historical experience, political configuration, and prevailing threat perception. Nonetheless, one principle recurs across jurisdictions: dissolution is treated as an *extraordinary constitutional measure*, permissible only where a genuine threat to the democratic constitutional order can be demonstrated.[32]

Germany remains the most frequently cited reference point in this literature, having developed the concept of *militant democracy* (*streitbare Demokratie*) in direct response to the collapse of the Weimar Republic, which opened the path to totalitarian rule through ostensibly democratic mechanisms.[33] Under the German Basic Law, the Federal Constitutional Court requires cumulative proof of two elements: an aim contrary to the free democratic order, and a *concrete capability* to realize that aim. [34] While the dual

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[31] Jerg Gutmann and Stefan Voigt, "Militant Constitutionalism: A Promising Concept to Make Constitutional Backsliding Less Likely?," *Public Choice* 195, no. 3–4 (June 6, 2023): 377–404, https://doi.org/10.1007/s11127-021-00874-1; Yeşim Arat, "Democratic Backsliding and the Instrumentalization of Women's Rights in Turkey," *Politics & Gender* 18, no. 4 (December 27, 2022): 911–41, https://doi.org/10.1017/S1743923X21000192; Richard Bellamy and Sandra Kröger, "Countering Democratic Backsliding by EU Member States: Constitutional Pluralism and 'Value' Differentiated Integration," *Swiss Political Science Review* 27, no. 3 (September 21, 2021): 619–36, https://doi.org/10.1111/spsr.12448.

[32] Henning Bergmann, Hanna Bäck, and Thomas Saalfeld, "Party-System Polarisation, Legislative Institutions and Cabinet Survival in 28 Parliamentary Democracies, 1945–2019," *West European Politics* 45, no. 3 (April 16, 2022): 612–37, https://doi.org/10.1080/01402382.2020.1870345; José Antonio Cheibub and Bjørn Erik Rasch, "Constitutional Parliamentarism in Europe, 1800–2019," *West European Politics* 45, no. 3 (April 16, 2022): 470–501, https://doi.org/10.1080/01402382.2020.1870841.

[33] Vanessa A. Boese et al., "How Democracies Prevail: Democratic Resilience as a Two-Stage Process," *Democratization* 28, no. 5 (July 4, 2021): 885–907, https://doi.org/10.1080/13510347.2021.1891413; Mikko Immanen, "Days of the Cavemen? Adorno, Spengler, and the Anatomy of Caesarism," *New German Critique* 48, no. 2 (August 1, 2021): 177–204, https://doi.org/10.1215/0094033X-8989316.

[34] Matthias Mahlmann, "The Basic Law at 60 – Human Dignity and the Culture of Republicanism," *German Law Journal* 11, no. 1 (January 1, 2010): 9–31, https://doi.org/10.1017/S207183220001840X; Donald P. Kommers, "German Constitutionalism: A

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requirement treats dissolution as a last option, recent methods have adopted a softer alternative: blocking anti-constitutional parties that don't qualify for dissolution from receiving state funding. This method, known as soft militant democracy, is currently being tested. After finishing second in the February 2025 federal election, the Alternative for Germany (AfD) was officially classified by the Federal Office for the Protection of the Constitution (Bundesverfassungsschutz) as a right-wing extremist organization nationwide, following prior regional classifications in Saxony, Thuringia, and Saxony-Anhalt. [35]

A cross-party group of Bundestag members subsequently tabled a formal motion to petition the Federal Constitutional Court for a ban, yet as of this writing no government, Bundestag, or Bundesrat application has actually been filed. Senior legislators from the AfD's own political rivals have publicly opposed a ban, warning it would hand the party a "martyr" narrative. [36] In the interim, sub-national authorities have reached for the softer end of the sanction spectrum: the state of Rhineland-Palatinate moved in 2026 to bar members of organizations classified as extremist, including the AfD, from public-sector employment, without touching the party's legal existence.[37] The AfD episode thus illustrates, in real time, both the deliberate difficulty Germany's cumulative aim-plus-capability standard imposes on dissolution and the practical value of graduated, sub-dissolution sanctions as a proportionate intermediate response, *precisely the design logic of* this study.[38]

Prolegomenon," *German Law Journal* 20, no. 4 (May 24, 2019): 534–56, https://doi.org/10.1017/glj.2019.46.

[35] Chiara Fiorelli, "Are Cartels Going Private? Italian Parties' Organizational Faces since the Golden Age of Public Financing," *Contemporary Italian Politics* 14, no. 3 (July 3, 2022): 314–30, https://doi.org/10.1080/23248823.2021.2007653; Piero Ignazi and Chiara Fiorelli, "The End of Cornucopia: Party Financing after the Great Recession," *Government and Opposition* 57, no. 2 (April 11, 2022): 193–216, https://doi.org/10.1017/gov.2021.3; Daniela R. Piccio, "Party Funding in Italy: Organizational Models, Empirical Evidence and Party Self-Delegitimation," *Contemporary Italian Politics* 12, no. 4 (October 1, 2020): 461–75, https://doi.org/10.1080/23248823.2020.1838866.

[36] Timo Korstenbroek, "Rethinking the Public Sphere in an Age of Radical-Right Populism: A Case for Building an Empathetic Public Sphere," *Communication Theory* 32, no. 1 (January 13, 2022): 68–87, https://doi.org/10.1093/ct/qtab005; Soraya Hamdaoui, "Anti-Populism during the Yellow Vest Protests: From Combatting the Rassemblement National to Dealing with Street Populists," *The British Journal of Politics and International Relations* 24, no. 3 (August 10, 2022): 493–510, https://doi.org/10.1177/1369148120974014.

[37] David Weisburd et al., "What Is the Best Approach for Preventing Recruitment to Terrorism? Findings from ABM Experiments in Social and Situational Prevention," *Criminology & Public Policy* 21, no. 2 (May 21, 2022): 461–85, https://doi.org/10.1111/1745-9133.12579.

[38] Sjifra E de Leeuw and Angela K Bourne, "Explaining Citizen Attitudes to Strategies of Democratic Defense in Europe: A Resource in Responses to Contemporary Challenges to Liberal Democracy?," *International Journal of Public Opinion Research* 32, no. 4 (December 23, 2020): 694–710, https://doi.org/10.1093/ijpor/edz042; Angela K. Bourne, "Democratization and the Illegalization of Political Parties in Europe," *Democratization* 19, no. 6 (December 2012): 1065–85, https://doi.org/10.1080/13510347.2011.626118; Andreu Arenas, "Party Bans: Deterrence or

Spain emphasizes a different approach by developing its dissolution mechanism primarily to shield the state from groups associated with violence and terrorism, rather than solely targeting ideological differences. Dissolution is based not on a party's declared goals but on proven conduct that endorses or enables threats to democratic order. This approach respects political pluralism while denying protection to organizations that exploit democratic freedoms to justify anti-democratic activities.[39]

Turkey presents a preventative case. Its Constitutional Court has repeatedly dissolved political parties on grounds of secularism, state integrity, and core constitutional values, [40] but the relatively high frequency of dissolution has drawn sustained criticism for narrowing political competition and limiting freedom of association, illustrating the paradox in which a state's effort to protect democracy diminishes democratic space itself.[41] This pattern remains unresolved: the closure case against the pro-Kurdish Peoples' Democratic Party (HDP), filed by the Chief Public Prosecutor in March 2021 requesting both dissolution and a five-year political ban for 451 named politicians, was still pending before the Constitutional Court years later even as HDP's successor, the DEM Party, faced fresh closure calls from nationalist politicians in 2024.[42] This pattern remains unresolved: the closure case against the pro-Kurdish Peoples' Democratic Party (HDP), filed by the Chief Public Prosecutor in March 2021 requesting both dissolution and a five-year political ban for 451 named politicians, was still pending before the Constitutional Court years later even as HDP's successor, the DEM Party, faced fresh closure calls from nationalist politicians in 2024.[43]

Backlash? Evidence from the Basque Country," *Quarterly Journal of Political Science* 16, no. 3 (July 13, 2021): 325–58, https://doi.org/10.1561/100.00018119.

[39] Nadzirotus Sintya Falady, "Perbandingan Hukum Pembubaran Partai Politik Jerman Dan Indonesia," *Jurnal Ilmiah Penegakan Hukum* 7, no. 1 (June 1, 2020): 44–52, https://doi.org/10.31289/jiph.v7i1.3651; Hogan, "Analyzing The Risk Thresholds For Banning Political Parties After NPD II"; Selin Türkeş-Kılıç, "Political Party Closures in European Democratic Order: Comparing the Justifications in DTP and Batasuna Decisions," *Journal of European Public Policy* 23, no. 4 (April 20, 2016): 492–509, https://doi.org/10.1080/13501763.2015.1051571.

[40] Ergun Özbudun, "Party Prohibition Cases: Different Approaches by the Turkish Constitutional Court and the European Court of Human Rights," *Democratization* 17, no. 1 (February 15, 2010): 125–42, https://doi.org/10.1080/13510340903453807; O. Celep, "The Political Causes of Party Closures in Turkey," *Parliamentary Affairs* 67, no. 2 (April 1, 2014): 371–90, https://doi.org/10.1093/pa/gss041; Kenan Sevinc, Ralph W. Hood, and Thomas Coleman, *Secularism in Turkey*, ed. Phil Zuckerman and John R. Shook, vol. 1 (Oxford University Press, 2017), https://doi.org/10.1093/oxfordhb/9780199988457.013.10.

[41] Boese et al., "How Democracies Prevail: Democratic Resilience as a Two-Stage Process."

[42] Mariam Begadze, "Playbook of Subnational Illiberalism: Autocrats Face the Opposition-Led Local Governments," *Hague Journal on the Rule of Law* 14, no. 2–3 (December 21, 2022): 309–30, https://doi.org/10.1007/s40803-022-00184-8; Boese et al., "How Democracies Prevail: Democratic Resilience as a Two-Stage Process"; Sevinc, Hood, and Coleman, *Secularism in Turkey*.

[43] Arat, "Democratic Backsliding and the Instrumentalization of Women's Rights in Turkey"; Imren Borsuk and Paul T. Levin, "Social Coexistence and Violence during Turkey's Authoritarian Transition," *Southeast European and Black Sea Studies* 21, no. 2 (April 3, 2021): 175–87, https://doi.org/10.1080/14683857.2021.1909292.

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Ten international and domestic human-rights organizations, including Human Rights Watch and the International Commission of Jurists, formally intervened, arguing that the case itself violates the rights to association, assembly, and free elections.[44] *Showing how*, absent an enhanced standard of proof and proportionality testing, a dissolution mechanism can be mobilized repeatedly against the same political current under successive party labels, precisely the *overcriminalization* risk this study attempts to foreclose through the CBPDM's enhanced evidentiary standard.

In 2014, South Korea dissolved the United Progressive Party via a Constitutional Court decision, sparking widespread academic debate over the balance between national-security concerns and the political rights of party members and voters who had entrusted them with an electoral mandate. Recent scholarship tends to favor a self-limiting or soft militant democracy approach, advocating for restrictions to be applied gradually and only when absolutely necessary.[45] Although this crisis did not involve party dissolution, it demonstrates the same underlying principle this study puts forward for the CBPDM: that constitutional courts, when equipped with clear standards and genuine independence, can act decisively as guardians of constitutional democracy against threats that originate from within the machinery of the state itself, not only from insurgent political parties.[46]

To make these differences comparable, Table 1 summarizes the constitutional basis, substantive threshold, legal standing, evidentiary approach, and sanction design across the four comparator jurisdictions and Indonesia's current framework. Figure 2 presents a composite qualitative index that aggregates these same dimensions into a single proportionality-safeguard score for each jurisdiction.

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[44] Marvin van Bekkum and Frederik Zuiderveen Borgesius, "Digital Welfare Fraud Detection and the Dutch SyRI Judgment," *European Journal of Social Security* 23, no. 4 (December 2, 2021): 323–40, https://doi.org/10.1177/13882627211031257; Narnia Bohler-Muller et al., "The 'Sacrifice' of Human Rights during an Unprecedented Pandemic: Reflections on Survey-Based Evidence," *South African Journal on Human Rights* 37, no. 2 (April 3, 2021): 154–80, https://doi.org/10.1080/02587203.2021.2009740; Atina Krajewska, "Connecting Reproductive Rights, Democracy, and the Rule of Law: Lessons from Poland in Times of COVID-19," *German Law Journal* 22, no. 6 (September 15, 2021): 1072–97, https://doi.org/10.1017/glj.2021.56.

[45] Jongcheol Kim, "Dissolution of the Unified Progressive Party Case in Korea: A Critical Review with Reference to the European Court of Human Rights Case Law," *Journal of East Asia and International Law* 10, no. 1 (May 30, 2017): 7–7, https://doi.org/10.14330/jeail.2017.10.1.07; Müller, "Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy."

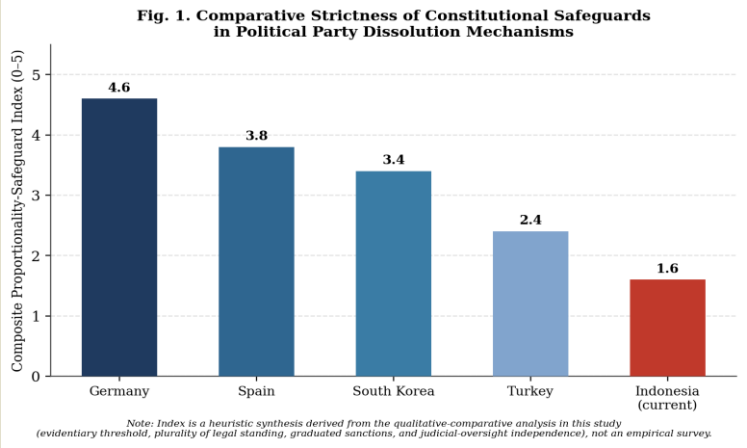
[46] David Prendergast, "The Judicial Role in Protecting Democracy from Populism," *German Law Journal* 20, no. 2 (April 25, 2019): 245–62, https://doi.org/10.1017/glj.2019.15; Pablo Castillo-Ortiz, "The Dilemmas of Constitutional Courts and the Case for a New Design of Kelsenian Institutions," *Law and Philosophy* 39, no. 6 (December 13, 2020): 617–55, https://doi.org/10.1007/s10982-020-09378-3.

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Table 1. Comparative Overview of Political Party Dissolution Mechanisms

Jurisdiction	Substantive Threshold	Legal Standing	Evidentiary Approach	Sanction Design
Germany	Anti-constitutional aim + concrete capability to realize it (cumulative)	Federal government, Bundestag, or Bundesrat	Strict proof of concrete threat capacity	Graduated: funding exclusion (soft measure) or full dissolution
Spain	Demonstrated actual conduct supporting violence/terrorism	Government and Public Prosecutor's Office	Conduct-based evidentiary record	Binary, but conduct-anchored
Turkey	Contravention of secularism, state integrity, core constitutional values	Chief Public Prosecutor	Broad discretionary threshold	Binary; frequently applied
South Korea	Aims/activities contrary to the constitutionally guaranteed democratic order	Government, via Constitutional Court petition	Moderate; contested proportionality standard	Binary, moving toward self-limiting practice
Indonesia (current)	"Contrary to the Constitution/Pancasila" (undefined)	Government only (monopoly)	No enhanced standard of proof	Binary; no intermediate sanction

Source: authors' comparative-normative synthesis based on the legal materials analysed in this study (2026).



Read together, Table 1 and Figure 2 point to five recurring characteristics of party-dissolution regimes in mature constitutional democracies.

First, dissolution is regularly positioned as a constitutional *ultimum remedium* rather than an ordinary political mechanism. Second, it must rest on a genuine threat to democracy, not simply ideological disagreement or criticism of the government. Third, the process must be subject to independent constitutional-judicial oversight, insulated from political intervention. Fourth, the standard of proof must satisfy legality, necessity, and proportionality, so that any restriction on freedom of association can be constitutionally justified. Fifth, a discernible trend toward graduated constitutional sanctions includes restrictions on state funding, institutional supervision, temporary electoral disqualification, or mandated internal reform applied before dissolution.[47]

[47] Tom Gerald Daly and Brian Christopher Jones, "Parties versus Democracy: Addressing Today's Political Party Threats to Democratic Rule," *International Journal of Constitutional Law* 18, no. 2 (August 4, 2020): 509–38, https://doi.org/10.1093/icon/moaa025; Russell Muirhead and Nancy L. Rosenblum, "The Political Theory of Parties and Partisanship: Catching Up," *Annual Review of Political Science* 23, no. 1 (May 11, 2020): 95–110, https://doi.org/10.1146/annurev-

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On this basis, this study contends that Indonesia's principal weakness does not lie in the existence of the Constitutional Court's authority, but in the absence of objective constitutional parameters for assessing threats to democracy and the absence of a graduated sanctions mechanism. Accordingly, redesigning Indonesia's framework calls for the adoption of three elements distilled from international practice: (i) a *clear and present constitutional danger* indicator as the basis for dissolution; (ii) a strengthened proportionality test embedded in the evidentiary process; and (iii) a constitutional sanctions system permitting the state to impose graduated measures before dissolution is selected as a final resort.[48]

Contemporary Empirical Confirmation: Party Dissolution and Constitutional Security in Practice, 2024–2026

The doctrinal patterns identified are not simply historical artefacts; unfolding events are actively testing them in the period this study was conducted, lending the cross-sectional analysis a degree of contemporary weight that purely archival case law cannot provide. Table 2 consolidates the five episodes discussed above: *two from Indonesia*, *one each from Germany*, *Turkey*, *and South Korea*, alongside the definite structural weakness or design strength each episode illustrates and the corresponding element of the CBPDM it substantiates.[49]

Table 2. Contemporary Episodes (2024–2026) Illustrating the Structural Arguments of This Study

Episode	Jurisdiction / Year	Structural Issue Illustrated	Corresponding CBPDM Element
Constitutional Court's dissolution authority never invoked; PDRI merger resolved outside judicial channel	Indonesia, 2021–2025	Under-enforcement risk arising from single-actor legal standing and undefined parameters	Multi-layer legal standing; clear-and-present-danger parameter
House of Representatives legislating around Constitutional Court rulings 60 & 70/PUU-XXII/2024	Indonesia, 2024	Procedurally "legal" erosion of judicial authority (democratic backsliding)	Broadened constitutional-security parameter beyond conventional threats
AfD classified as extremist by BfV; Bundestag ban motion tabled but not filed; Rhineland-Palatinate civil-service bar	Germany, 2025–2026	Difficulty of meeting a cumulative aim-plus-capability threshold; value of sub-dissolution sanctions	Enhanced standard of proof; graduated constitutional sanctions

polisci-041916-020727; Juraj Medzihorsky and Staffan I. Lindberg, "Walking the Talk: How to Identify Anti-Pluralist Parties," *Party Politics* 30, no. 3 (May 17, 2024): 420–34, https://doi.org/10.1177/13540688231153092.

[48] Theunis Roux, "Indonesia's Judicial Review Regime in Comparative Perspective," *Constitutional Review* 4, no. 2 (December 31, 2018): 188, https://doi.org/10.31078/consrev422.

[49] Marcus Mietzner, "Populist Anti-Scientism, Religious Polarisation, and Institutionalised Corruption: How Indonesia's Democratic Decline Shaped Its COVID-19 Response," *Journal of Current Southeast Asian Affairs* 39, no. 2 (August 5, 2020): 227–49, https://doi.org/10.1177/1868103420935561; Tim Lindsey, "Filling the Hole in Indonesia's Constitutional System: Constitutional Courts and the Review of Regulations in a Split Jurisdiction," *Constitutional Review* 4, no. 1 (May 31, 2018): 27–44, https://doi.org/10.31078/consrev412.

Episode	Jurisdiction / Year	Structural Issue Illustrated	Corresponding CBPDM Element
HDP closure case unresolved for years while successor DEM Party faces fresh closure calls	Turkey, 2021–2024	Overcriminalization risk from low evidentiary threshold and repeat mobilization of dissolution	Enhanced standard of proof; ultimum remedium principle
Martial law declaration reversed within hours; Constitutional Court unanimously upholds impeachment	South Korea, 2024–2025	Judicial capacity to act decisively against threats originating within state power itself	Expanded judicial constitutional guardianship

Source: authors' synthesis of the contemporary episodes discussed 2026).

Two broader inferences follow from this consolidated picture. First, the Indonesian and Turkish episodes point in the same direction from opposite ends: Indonesia illustrates the cost of a dissolution mechanism that is too difficult to invoke because standing and parameters are absent, while Turkey illustrates the cost of a mechanism that is too easy to invoke because evidentiary thresholds are weak together confirming that the reform problem this study tackles is one of calibration, not simply of institutional design in the abstract. Second, the German and South Korean episodes show that the two remaining pillars of the CBPDM are not speculative additions but responses to live constitutional practice: Germany's simultaneous reliance on a demanding constitutional threshold and a lighter, sub-dissolution civil-service sanction is precisely the graduated-sanctions logic this study formalizes. In contrast, South Korea's swift and unanimous judicial response to an executive overreach demonstrates the kind of guardianship capacity the CBPDM seeks to entrench for the Indonesian Constitutional Court. Taken together, these episodes suggest that the proposed reconstruction responds not to a hypothetical future risk, but to failure modes already visible in comparable constitutional democracies during the period of this research.[50]

Reconstructing the Framework: The Constitutional Balanced Party Dissolution Model (CBPDM)

The analysis above demonstrates that Indonesia's central problem is not the existence of the Constitutional Court's dissolution authority, but the absence of a constitutional framework able of integrate the protection of democratic freedom with the requirement of constitutional security. The prevailing approach remains legalistic, emphasizing formal breaches of state ideology or constitutional provisions, and has not kept pace with the changing character of threats to modern democracy: democratic backsliding, organized political corruption, digital information manipulation, infiltration of state institutions, and abuse of electoral processes. In short, Indonesia's legal system remains oriented toward *state security*. In contrast, contemporary constitutional theory calls for the protection of *constitutional security and* the continuity of republican values, institutions, and procedures themselves. [51]

[50] Max Goplerud and Petra Schleiter, "An Index of Assembly Dissolution Powers," *Comparative Political Studies* 49, no. 4 (March 25, 2016): 427–56, https://doi.org/10.1177/0010414015612393; Lasse Schuldt, "Mixed Signals of Europeanization: Revisiting the NPD Decision in Light of the European Court of Human Rights' Jurisprudence," *German Law Journal* 19, no. 4 (July 1, 2018): 817–44, https://doi.org/10.1017/S2071832200022884.

[51] Fossati, "Illiberal Resistance to Democratic Backsliding.".

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Building on this normative and comparative study, this study suggests the *Constitutional Balanced Party Dissolution Model* (CBPDM) as a new paradigm for regulating party dissolution in Indonesia. The model rests on three mutually reinforcing pillars: the protection of constitutional democracy, respect for human rights, and the application of the proportionality principle. Together, these pillars reposition party dissolution away from a repressive state instrument and toward a constitutional mechanism for preserving democratic continuity applied narrowly, proportionally, and under independent judicial supervision. The model consists of five interlocking components, summarized in Table 3 and elaborated below.

(*a*) *Reconstructing the constitutional parameter for dissolution.* This study suggests that the grounds for dissolution be reformulated around a *clear and present constitutional danger* standard, requiring cumulative satisfaction of five elements: (1) an organizational aim genuinely contrary to the constitution's basic principles democracy, the rule of law, popular sovereignty, and human-rights protection; (2) realization of that aim through measurable, systematic, and sustained organizational activity, rather other than mere political expression or ideological statement; (3) an actual capability to realize the threat, whether by capture of political institutions, use of violence, or organized undermining of democratic procedures; (4) an actual or highly probable risk of damaging constitutional democracy in the short or medium term; and (5) the absence of any less restrictive legal instrument capable of neutralizing the threat. This formulation draws on the emerging concept of *soft militant democracy*, protecting democracy while respecting citizens' political rights through a demanding evidentiary standard and strict judicial oversight.[52]

(*b*) *Revising the legal-standing system.* The government's monopoly as sole petitioner is no longer fully consistent with the principle of checks and balances, since dependence on executive political will risks both under-enforcement toward coalition partners and selective enforcement against political opponents. This study therefore proposes a *multi-layer constitutional standing* model in which the government remains the primary applicant. Still, in defined circumstances, a constitutionally designated state institution with a constitution-guarding function may also file a petition, subject to strict qualifying requirements and a *preliminary constitutional review* screening mechanism. The purpose of this design is not to multiply political contestation before the Constitutional Court, but to ensure that constitutional protection does not depend solely on the government's political preferences.[53]

(*c*) *Strengthening the constitutional standard of proof.* Because dissolution is the most severe restriction on freedom of association, this study suggests an enhanced

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[52] Invernizzi Accetti and Zuckerman, "What's Wrong with Militant Democracy?"; Müller, "Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy."

[53] Admark Moyo, "Standing, Access to Justice and the Rule of Law in Zimbabwe," *African Human Rights Law Journal* 18, no. 1 (2018), https://doi.org/10.17159/1996-2096/2018/v18n1a13; Joanna Bell, "The Resurgence of Standing in Judicial Review," *Oxford Journal of Legal Studies* 44, no. 2 (June 7, 2024): 313–41, https://doi.org/10.1093/ojls/gqae005; Doreen Lustig and J H H Weiler, "Judicial Review in the Contemporary World—Retrospective and Prospective," *International Journal of Constitutional Law* 16, no. 2 (June 15, 2018): 315–72, https://doi.org/10.1093/icon/moy057.

constitutional standard of proof that exceeds that applied in ordinary constitutional cases. The Constitutional Court would be required to examine, cumulatively: the degree of threat to democracy; the causal link between a party's conduct and the constitutional threat; the availability and effectiveness of less restrictive legal instruments; and the proportionality between the interest in protecting democracy and the restriction imposed on citizens' political rights. Under this design, dissolution is genuinely rendered an *ultimum remedium*, rather than a first-resort instrument for resolving political disputes.[54]

(*d*) A *graduated system of constitutional sanctions.* Comparative practice demonstrates that democratic protection need not always culminate in dissolution. This study therefore proposes a five-tier sanction ladder: (1) a constitutional warning where a remediable breach of democratic norm is identified; (2) temporary suspension of state financial assistance where the breach is systematic; (3) restriction of electoral participation or candidacy rights where the breach threatens the integrity of the democratic procedure; (4) special constitutional supervision by the Constitutional Court over a party's internal governance; and (5) dissolution, reserved for cases in which all preceding instruments have proven ineffective and the threat satisfies the *clear and present constitutional danger* parameter. This stratified structure operationalizes the proportionality principle by obliging the state to select the least restrictive effective instrument before resorting to the most severe sanction.[55]

(*e*) *Expanding the Constitutional Court's guardianship role.* Under the CBPDM, the Constitutional Court is repositioned from a body that merely adjudicates dissolution disputes to a defender of *constitutional democracy*, making sure that every restriction on political freedom satisfies the principles of legality, necessity, proportionality, and accountability. Dissolution is thereby reconceived not as a mechanism for narrowing political pluralism, but as an instrument for protecting democracy that is applied narrowly, objectively, and constitutionally.

Table 3. Structural Components of the Constitutional Balanced Party Dissolution Model (CBPDM)

Pillar	Core Mechanism	Reform Objective
Constitutional danger parameter	Five cumulative elements under a clear-and-present-danger standard	Replace open-textured "contrary to the Constitution" language with a measurable threshold
Multi-layer legal standing	Government as primary petitioner; qualified state institutions as secondary petitioners under preliminary review	Prevent under-enforcement and selective enforcement arising from a single-actor monopoly
Enhanced standard of proof	Cumulative test: threat level, causation, necessity, proportionality	Ensure dissolution functions as an ultimum remedium, not a first-resort measure
Graduated constitutional sanctions	Five-tier ladder from constitutional warning to dissolution	Enable proportionate state responses short of dissolution
Judicial constitutional guardianship	Expanded supervisory mandate for the Constitutional Court	Reposition the Court as guardian of constitutional democracy, not merely case adjudicator

[54] Daly and Jones, "Parties versus Democracy: Addressing Today's Political Party Threats to Democratic Rule"; de Leeuw and Bourne, "Explaining Citizen Attitudes to Strategies of Democratic Defense in Europe: A Resource in Responses to Contemporary Challenges to Liberal Democracy?"

[55] Arenas, "Party Bans: Deterrence or Backlash? Evidence from the Basque Country."

Source: authors' synthesis of the proposed Constitutional Balanced Party Dissolution Model (2026).

Through integrating militant-democracy theory, constitutional security, proportionality, and graduated constitutional sanctions, the CBPDM delivers a novel theoretical contribution to the development of Indonesian constitutional law. In contrast to prior scholarship, which has largely focused on dissolution procedures or the Constitutional Court's institutional authority, this study suggests a constitutional design that simultaneously safeguards democracy and constitutional rights. The reconstruction proposed here is therefore relevant not only as a recommendation for amending the Law on Political Parties and the Constitutional Court's procedural rules, but also as a conceptual framework adding to the broader theory of constitutional security in constitutional democracies.

Conclusion

This study shows that Indonesia's constitutional framework for the dissolution of political parties has experienced significant change since the Reform era, principally through vesting exclusive adjudicative authority in the Constitutional Court. This transformation represents genuine progress in strengthening the rule of law and constitutional supremacy, shifting dissolution authority away from executive dominance toward an independent constitutional-judicial mechanism. Nevertheless, this institutional strengthening has not been matched by an adequate renewal of substantive norms. The prevailing framework still exhibits fundamental weaknesses: the absence of objective constitutional parameters for the grounds of dissolution, legal standing confined exclusively to the government, the absence of an enhanced standard of proof, and the absence of graduated constitutional sanctions. These weaknesses leave Indonesia's legal system incompletely equipped to respond to contemporary threats to constitutional democracy, including democratic backsliding, abuse of democratic institutions, systemic political corruption, and other unconventional threats a diagnosis corroborated, by the Constitutional Court's two-decade non-use of its own dissolution authority, the 2021–2025 PDRI episode, and the 2024 legislative attempt to circumvent Constitutional Court rulings 60 and 70/PUU-XXII/2024.

Through normative, conceptual, and comparative study, this study finds that mature constitutional democracies tend to develop party-dissolution mechanisms grounded in a proportionality-sensitive application of militant-democracy theory, treating dissolution as an *ultimum remedium* applicable only where a genuine threat to constitutional democratic order can be demonstrated. This is not simply a doctrinal ideal: the still-unresolved 2025–2026 debate over banning Germany's AfD, the protracted 2021–2024 HDP/DEM Party closure proceedings in Turkey, and South Korea's swift constitutional response to the December 2024 martial law crisis each show, in real time, how the calibration of thresholds, evidence criteria, and judicial independence determines whether a dissolution mechanism protects democracy or corrodes it. Comparative practice further shows that protecting democracy cannot be separated from protecting freedom of association, political pluralism, and citizens' constitutional rights. Party dissolution should therefore be understood not as a repressive state instrument, but as a constitutional protection mechanism subject to legality, necessity, proportionality, and independent judicial oversight.

The principal contribution (*novelty*) of this study is the development of the Constitutional Balanced Party Dissolution Model (CBPDM), integrating constitutional

democracy, constitutional security, freedom of association, and judicial constitutional control within a single coherent constitutional framework. The model reconstructs Indonesia's dissolution regime through five interrelated reforms: (1) a *clear and present constitutional danger* indicator as an objective parameter for determining grounds for dissolution; (2) a reformulated legal-standing system that retains both the effectiveness of constitutional protection and the principle of checks and balances; (3) an *enhanced constitutional standard of proof*; (4) a graduated constitutional sanctions system applied before dissolution; and (5) a strengthened role for the Constitutional Court as guardian of constitutional democracy, assuring that every restriction on political freedom is proportional, transparent, and accountable.

Theoretically, this study extends constitutional-law discourse by positioning constitutional security as a paradigm that complements militant-democracy theory, so that the protection of democracy addresses not only state survival but also the continuity of democratic institutions, constitutional supremacy, and citizens' constitutional rights. Practically, the findings offer recommendations for legislators and the Constitutional Court to reform the regulation of party dissolution through revision of the Law on Political Parties, refinement of the Constitutional Court's procedural law, and the articulation of clearer, more measurable constitutional parameters. The redesigned framework proposed here is thus intended to produce a dissolution mechanism that is both effective in safeguarding constitutional security and protective of democratic freedom as a foundational pillar of the democratic *rechtsstaat*.

This study is nonetheless limited by its reliance on normative-legal and comparative methods. While on contemporary, publicly documented events in Indonesia, Germany, Turkey, and South Korea to ground the analysis in live constitutional practice, these episodes are illustrative rather than a systematic empirical dataset. The study does not use interviews, surveys, or process-tracing to test the actual implementation of oversight mechanisms across the jurisdictions examined. Future research should therefore pursue empirical and socio-legal approaches to test the effectiveness of the proposed model, including analysis of political dynamics, institutional behaviour, and the influence of digital technological development on emerging threats to constitutional democracy. In this way, the development of legal frameworks governing party dissolution can continue to be adapted to the challenges of twenty-first-century democracy without compromising the principles of the rule of law, human rights, and constitutional supremacy.

CRediT Authorship Contribution Statement

Rahmad Lubis: Conceptualization, Methodology, Writing – original draft. **Tri Sulistyowati**: Supervision, Validation, Writing – review & editing. **Matnur Ritonga**: Comparative-law analysis, Investigation. **Mahbub Zuhri**: Formal analysis, Resources. **Ramzi Durin**: Data curation, Writing – review & editing.

Declaration of Competing Interests

The authors declare that they have no competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Data Availability

Data sharing is not applicable to this article, as it is a normative-legal and

comparative-constitutional study that analyses publicly available constitutional provisions, statutes, and court decisions cited throughout the text.

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