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The Interests of Democracy or the Eradication of Corruption: The Dissolution of Political Parties in a Review of Law and Practice in Other Countries

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ABSTRACT

Dissolution of political parties as a legal response to systemic corruption raises fundamental questions about the balance between democratic integrity and political accountability. In the Indonesian context, political parties function as pillars of representative democracy, yet have increasingly been implicated in corruption scandals that benefit the party institutionally. The current legal framework—anchored in Article 24C of the 1945 Constitution and Law No. 2 of 2008—limits dissolution to violations of ideological and constitutional principles, excluding corruption from explicit consideration. This normative gap weakens the state's capacity to enforce accountability. Through a normative-juridical and comparative approach, this study analyzes the theoretical justifications and practical mechanisms for dissolving political parties involved in systemic corruption. Case studies from Germany, Turkey, and South Korea demonstrate how other constitutional democracies integrate financial misconduct into their criteria for party dissolution. The findings support the need to reinterpret constitutional threats to include entrenched corruption as an assault on democratic order. Drawing on the theories of militant democracy, corporate criminal liability, and organizational accountability, this article advocates for legal reform that enables the Constitutional Court to act decisively against parties that exploit democratic institutions for corrupt purposes, while still preserving procedural fairness and political pluralism..

1. Introduction

The presence of political parties in a democratic state is more than a constitutional necessity—political parties are the functional foundation of government. Through political parties, citizens exercise their rights to assemble, express their opinions, and participate in determining the direction of national policy.[1] These organizations facilitate electoral competition, articulate social demands, and build coalitions for legislation.[2] At the same time, their authority positions them not only as vehicles of representation but also as guardians of power.[3]

However, political parties' centrality also makes them vulnerable to institutional decay. When internal democracy is weak and transparency is lacking, political parties risk becoming instruments for elite power grabs.[4] In some political systems, this degeneration has developed into systemic corruption, where party structures are exploited to secure illicit funds, protect criminals, and normalize impunity.[5] This reality tests the resilience of democratic institutions, especially when existing accountability mechanisms are inadequate or politically co-opted.

Indonesia's legal framework reflects this tension. While it grants legal status to political parties under Law No. 2 of 2008 (as amended by Law No. 2 of 2011), and provides for their dissolution under extraordinary circumstances, the grounds are narrowly defined—primarily threats to ideology or national unity. Corruption, while detrimental to governance, is not explicitly recognized as a justification for institutional dissolution.[6] As corruption scandals implicate elites and party structures, the inadequacy of the legal response becomes apparent.[7]

This gap between normative ideals and political reality raises pressing questions. Should political parties found to facilitate, conceal, or benefit from corruption be subject to institutional sanctions such as dissolution? If so, what safeguards can prevent the abuse of such power for political repression? Answering these questions requires not only an

[1] Russell J. Dalton, *Citizen Politics: Public Opinion and Political Parties in Advanced Industrial Democracies*, 6th ed. (CQ Press, 2013).

[2] Olivier Jacques, 'Electoral Competition and the Party Politics of Public Investments', *Party Politics* 28, no. 6 (2021): 1029–40, https://doi.org/https://doi.org/10.1177/1354068821103638.

[3] Richard S. Katz and Peter Mair, 'Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party', *Party Politics* 1, no. 1 (1995): 5–28, https://doi.org/https://doi.org/10.1177/1354068895001001001.

[4] James R. Hollyer, B. Peter Rosendorff, and James Raymond Vreeland, 'Why Do Autocrats Disclose? Economic Transparency and Inter-Elite Politics in the Shadow of Mass Unrest', *Journal of Conflict Resolution* 63, no. 6 (2018): 1488–1516, https://doi.org/https://doi.org/10.1177/0022002718792602.

[5] Staffan I. Lindberg, Maria C. Lo Bue, and Kunal Sen, 'Clientelism, Corruption and the Rule of Law', *World Development* 158 (2022), https://doi.org/https://doi.org/10.1016/j.worlddev.2022.105989.

[6] Muhammad Mutawalli Mukhlis et al., 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia', *Fenomena* 23, no. 1 (2024): 1–14, https://doi.org/10.35719/fenomena.v23i1.155.

[7] Lindberg, Bue, and Sen, 'Clientelism, Corruption and the Rule of Law'.

analysis of domestic law but also a comparative understanding of how other democracies have faced similar dilemmas.

A study by Tjung and Darmadi[8] offers critical insights into Indonesia's legal standing. They show that although criminal sanctions under Law No. 8/2010 and Law No. 31/1999 theoretically allow for the punishment of legal entities—including political parties—there is still no established practice of prosecuting or disbanding parties for institutional corruption. Their analysis also reveals that court rulings involving party actors have not resulted in any formal steps toward disbanding parties, creating a normative gap between criminal law and constitutional procedures.

Siagian[9], In another contribution, examines how the Constitutional Court has responded to calls for broader dissolution powers. His review of the Constitutional Court's jurisprudence reveals a pattern of judicial caution, where dissolution has been framed strictly within the confines of ideology or anti-democratic activity. While the Court acknowledged the seriousness of corruption, it did not interpret the Constitution as permitting dissolution on that basis without legislative support.

Paskarina[10] explores how political parties maintain their positions despite allegations of corruption, particularly during regional elections. Her fieldwork shows how candidates accused of corruption continue to receive support from their parties and maintain electoral power through client ties. The result is a culture where corruption is downplayed, loyalty is rewarded, and accountability mechanisms are undermined.

A broader empirical study published in Public Organization Review by Ade Pranata[11] surveyed institutional responses to corruption across Southeast Asia and found that Indonesia lags in prosecuting political parties as organizational entities. While a legal framework exists in theory, enforcement is hampered by vague regulations and a lack of political will. The study advocates for institutional innovations that include corporate responsibility for political organizations, in line with international best practices.

These studies make it clear that current mechanisms for addressing party-based corruption are inadequate. While individuals are prosecuted, the institutions that enable or benefit from their actions often remain intact and untouched. Reforming this system requires rethinking the legal role of political parties, not simply as key actors in democracy, but as entities that, if left unchecked, could erode the very democracy they are supposed to uphold.

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[8] Made Shannon Tjung dan A.A. Ngurah Oka Yudistira Darmadi, "Mekanisme Pembubaran Partai Politik Yang Terbukti Melakukan Tindak Pidana Korupsi Di Indonesia," *Kertha Semaya : Journal Ilmu Hukum* 10, no. 3 (2022): 572–82, https://doi.org/https://doi.org/10.24843/KS.2022.v10.i03.p08.

[9] Abdul Hakim Siagian, 'Extension Of The Constitutional Court Authority In The Dissolution Of Corrupted Political Parties', *Nomoi Law Review* 1, no. 1 (2020), https://doi.org/https://doi.org/10.30596/nomoi.v1i1.4289.

[10] Lindberg, Bue, and Sen, 'Clientelism, Corruption and the Rule of Law'.

[11] Ade Paranata, 'A Systematic Literature Review of Anti-Corruption Policy: A Future Research Agenda in Indonesia', *Public Organization Review*, no. 62 (2025), https://doi.org/10.1007/s11115-025-00847-8.

This paper advances the discussion by examining legal gaps in Indonesia through a comparative perspective. Drawing on examples from Germany, Turkey, and South Korea - where laws on the dissolution of political parties address various threats to democracy, including financial misconduct - the paper advocates for a recalibration of Indonesian legal doctrine to integrate institutional accountability without sacrificing political freedoms. This dual objective—strengthening democracy while combating corruption - is the primary focus of the following analysis.

2. Legal Materials and Methods

This study focuses on analyzing legal regulations contained in legislation using normative legal research methods, court decisions, and legal doctrine. This method aims to explore how the dissolution of political parties can be legally justified in cases of systemic corruption, while still upholding democratic principles.

Several approaches were used. First, a legislative approach was applied to review Indonesian laws, such as the 1945 Constitution, Law Number 2 of 2008 concerning Political Parties, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Law Number 8 of 2010 concerning the Crime of Money Laundering. To determine the legal regulations related to the accountability and dissolution of political parties, an analysis of applicable laws was conducted.

Second, a conceptual approach is used to understand the theoretical basis of corporate criminal liability and its application to political parties. This approach includes an exploration of doctrines such as vicarious liability and identification theory, which support the liability of legal entities for the actions of their representatives.

Third, a comparative approach is used to examine how other countries—such as Germany, Turkey, and South Korea—regulate the dissolution of political parties, particularly in relation to anti-corruption efforts. This comparison aims to identify relevant legal models or innovations that can inform the Indonesian context.

In terms of legal analysis techniques, this study uses a combination of systematic interpretation, comparative analysis, and case-oriented evaluation. Systematic interpretation is used to ensure coherence between related laws and regulations, while comparative analysis helps assess the strengths and limitations of foreign regulatory frameworks. Case-oriented evaluation is used to analyze court decisions involving political parties, particularly those related to corruption, to understand how legal reasoning has evolved in practice.

Legal materials are collected from primary sources (statutes, court decisions, constitutional provisions), secondary sources (law journals, books, and expert opinions), and tertiary sources (law encyclopedias and dictionaries). These materials are critically reviewed to construct arguments that are doctrinally valid and practically relevant.

3. Results and Discussion

3.1 Legal Basis for Political Parties in Indonesia

As legal subjects in the Indonesian system, political parties have the status of legal entities. This status grants parties rights and obligations regulated by civil, criminal, and constitutional law, and affirms their separate existence from their individual members. This status stems from Law Number 2 of 2008 in conjunction with Law Number 2 of 2011, which mandates that political parties must be national in scope, uphold Pancasila and the 1945 Constitution, and have internal governance that reflects national unity.[12] Experts such as Jimly Asshiddiqie[13] positioning parties not merely as associations, but as essential institutions within the constitutional order. This institutional role raises unique legal questions when corruption within parties plays a role.[14]

From the perspective of normative legal theory, political parties can be understood through three lenses of legal personality: state grant, aggregate, and real entity.[15] The state grant approach emphasizes that political parties exist with the consent of the state.[16] Aggregate theory views political parties as private agreements between individuals.[17] Real entity theory treats political parties as organizations with an independent social essence.[18] Indonesian intellectuals, Nani Mulyati and Topo Santoso,[19] agree with the quasi-public law model, which emphasizes that political parties receive state funding and perform democratic public functions. In the context of public law, political parties should be considered as one of the actors, while also being able to bear private legal obligations.

The criminal liability of the parties is complex. Indonesian law recognizes "corporations" as legal subjects under Law No. 8 of 2010 (the crime of money laundering) and the Criminal Code (KUHP) through Supreme Court Regulation No. 13 of 2016.[20] The

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[12] Riana Wulandari Ananto, 'Juridical Review Adjustment of Legal Entity Political Parties and New Political Parties to Become Legal Entities Based on Law Number 2 of 2011 Concerning Political Parties', *Law Research Review Quarterly* 4, no. 2 (2018): 304–21, https://doi.org/https://doi.org/10.15294/snh.v4i02.25539.

[13] Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, 2nd ed. (Rawamangun: Sinar Grafika, 2010).

[14] Muhammad Mutawalli et al., 'Legal Analysis Of Appointment Of Former Corruption Concvicts As Commissioner Of BUMN', *Mimbar Keadilan* 15, no. 2 (2022): 25–36.

[15] Muñiz Fraticelli and Victor Manuel, *The Structure of Pluralism: On the Authority of Associations* (Oxford: Oxford University Press, 2014).

[16] Xiankun Jin et al., 'Political Governance in China's State-Owned Enterprises', *China Journal of Accounting Research* 15, no. 2 (2022), https://doi.org/https://doi.org/10.1016/j.cjar.2022.100236.

[17] David Gindis, 'From Fictions and Aggregates to Real Entities in the Theory of the Firm', *Journal of Institutional Economics* 5, no. 1 (2009): 25–46, https://doi.org/10.1017/S1744137408001203.

[18] Eva Micheler, 'Company Law - A Real Entity Theory' (London, 2021).

[19] Nani Mulyati and Topo Santoso, 'POLITICAL PARTY'S CRIMINAL LIABILITY IN INDONESIA', *Indonesia Law Review* 9, no. 2 (2019), https://doi.org/https://doi.org/10.15742/ilrev.v9n2.536.

[20] Arif Andiono, 'Application of Criminal Law to Corporations in Money Laundering Cases', *Ratio Legis Journal (RLJ)* 4, no. 1 (2025), https://doi.org/http://dx.doi.org/10.30659/rlj.4.1.466-491.

pending New Criminal Code (effective 2026) further codifies that legal entities—including associations and foundations—can face criminal prosecution for offenses committed in their own interests represented by senior agents or "beneficial owners."[21] However, whether political parties fall into this category remains unclear, as criminal laws generally do not explicitly mention it.

Nani Mulyati and Topo Santoso[22] argue that, from a doctrinal perspective, the party meets the criteria of a "corporation" and can thus face criminal liability, as long as the unlawful acts are carried out in the interests of the institution and through party organs, especially the central leadership. Prima Sophia Gusman[23] asserts through normative analysis that party accountability arises when criminal acts are committed in the name of the party or on mandate. However, he identifies legal resistance arising from conflicting norms between the corporate and party frameworks.

This relates to the legal concept of identification theory in corporate crime, where the actions of senior individuals (managers, board members) are legally considered to be the actions of the entity. Pieth and Ivory[24] note that if a corporate agent acts in accordance with its functions for the benefit of the corporation, the entity itself may be criminally liable. Applied to parties, if a principal organizes corrupt financing or misappropriation of a campaign, that party—as a legal entity—should be held liable. This approach is consistent with the modern international corporate responsibility framework.

However, in practice, political party accountability is limited. Several corruption cases involving senior political figures illustrate this gap. Most illustrative is the Bank Century bailout scandal, in which the indirect involvement of party elites (particularly from the Democratic Party during the Susilo Bambang Yudhoyono administration) raised questions about institutional merit, but the party as a whole was never subjected to legal proceedings.[25] Another example is the case of corruption committed by the former Treasurer of the Democratic Party, namely Muhammad Nazaruddin, in 2012 due to his role in arranging construction projects related to the Southeast Asian Games.[26] Despite clear party affiliations and public evidence suggesting broader involvement, the Democratic Party itself has not faced any institutional investigation. The KPK's efforts remain focused on individual accountability, not the party's structural responsibility.

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[21] Media Kompas.id, 'Tahun 2026, Hukum Pidana Di Indonesia Terapkan KUHP Baru', Media Kompas.id, 2025.

[22] Mulyati dan Santoso, "Political Party's Criminal Liability In Indonesia."

[23] Prima Sophia Gusman, 'Criminal Liability of Political Parties in Corruption Criminal Offense', *International Journal of Multicultural and Multireligious Understanding* 8, no. 10 (2021): 216, https://doi.org/10.18415/ijmmu.v8i10.3087.

[24] Mark Pieth and Radha Ivory, *Corporate Criminal Liability: Emergence, Convergence, and Risk* (Springer Science & Business Media, 2011), https://doi.org/10.1007/978-94-007-0674-3.

[25] Christian von Luebke, 'The Politics of Reform: Political Scandals, Elite Resistance, and Presidential Leadership in Indonesia', *Journal of Current Southeast Asian Affairs* 29, no. 1 (2010): 79–94, https://doi.org/https://doi.org/10.1177/18681034100290010.

[26] Johanes Danang Widoyoko, 'Politik, Patronase Dan Pengadaan Studi Kasus Korupsi Proyek Wisma Atlet', *Integritas : Jurnal Antikorupsi* 4, no. 2 (2018), https://doi.org/https://doi.org/10.32697/integritas.v4i2.200.

A similar pattern emerged in the e-KTP megacorruption case, which implicated high-ranking officials from several political parties, including Golkar and PDIP. Although several individuals have been convicted, including former House Speaker Setya Novanto (Golkar), the legal system has not pursued institutional sanctions against the political parties from which these actors came.[27] This is despite the fact that large sums of money allegedly flowed into party accounts, indicating favors at the party level. Maria Silvya Elisabeth Wangga[28] argues that this demonstrates the urgent need to reconceptualize the responsibilities of political parties within the framework of Indonesian criminal law.

Under the Anti-Money Laundering Law (Law No. 8/2010), political parties can be subject to criminal liability at the corporate level if the act is carried out through party organs, in the interests of the party, and is protected by vicarious liability under Perma No. 13/2016. PPATK research confirms that although individuals with political exposure from political parties can be flagged, political parties themselves are not yet treated as corporations.[29]

The theoretical implications are clear: parties' dual nature - as both public actors and private entities - creates doctrinal tensions. The real entity and public law perspectives favor criminal liability when corruption undermines democratic integrity; the state-grant tradition and the old Criminal Code reject it, often treating party violations as merely personal or individual wrongdoing.

Practical constraints exacerbate these tensions. Law No. 2/2011 empowers the state to regulate parties, but leaves law enforcement to them. Article 24C of the 1945 Constitution limits party dissolution to ideological threats or disruptions to national unity, not corruption. Thus, despite being legally recognized entities, parties - unlike corporations - benefit from immunity through structural ambiguity.

In short, the legal status of parties has been established, and theory supports institutional accountability when party organs commit corruption. However, current practice remains individual-centered, with no party-level criminal prosecutions or dissolution of parties for systemic corruption. This gap undermines efforts to strengthen democratic accountability.

3.2 Political Parties as Legal Subjects in Criminal Law

The democratic process in Indonesia is not merely focused on the presence of political parties, but rather on their legal status as recognized legal entities. According to Law No. 2 of 2008 in conjunction with Law No. 2 of 2011 concerning Political Parties, political parties are legal entities with legal standing (rechtspersoon). They are registered

[27] Safrin La Batu, 'Indonesia's House Speaker Allegedly Involved in e-KTP Mega Corruption Scandal', The Jakarta Post, 2017.

[28] Maria Silvya Elisabeth Wangga, 'Partai Politik Dalam Perspektif Pertanggungjawaban Pidana Korupsi', *Law, Development and Justice Review* 6, no. 3 (2024): 292–308, https://doi.org/https://doi.org/10.14710/ldjr.6.2023.292-308.

[29] Wahyu Ilham Pranoto, 'Paper Review: Criminal Liability of Political Parties from the Perspective of Anti-Money Laundering Act', Fakultas Hukum Universitas Indonesia, 2022.

with the Ministry of Law and Human Rights.[30] This recognition grants political parties the same legal capacity as other companies, allowing them to engage in civil transactions, own assets, and, in principle, be liable under administrative and criminal law. However, despite their status as legal subjects, the application of criminal liability to political parties remains underdeveloped doctrinally and practically untested in Indonesia.[31]

From a theoretical perspective, the inclusion of political parties within the scope of criminal law is supported by the theory of corporate criminal responsibility.[32] This theory has evolved to address the complex realities of organizations, where criminal acts are often embedded in institutional structures rather than attributed to a single individual. Three key doctrines support this framework: vicarious liability, identification theory, and corporate culture theory.[33]

The principle of vicarious liability allows an organization to be held responsible for the actions of its agents or employees if those actions are carried out within the scope of their duties and in the interests of the organization.[34] In the context of political parties, this principle can apply when party administrators or officials commit criminal acts such as corruption or illicit funding in the name of the party and with the intention of advancing its goals.[35] This doctrine shifts the focus from the individual alone to the institutions that provide the platform, authority, and resources to facilitate the crime.

Complementing this is identification theory, which states that the intentions and behaviors of senior individuals who represent the "directing mind and will" of the corporation can be attributed to the organization itself.[36] In political parties, this usually includes the party chairman, secretary general, treasurer, or other high-ranking official whose decisions guide the direction of the institution.[37] When these individuals engage in criminal acts—such as embezzlement of public funds, vote buying, or money laundering of illegal donations—the party as a legal entity can be said to be jointly responsible.

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[30] Ananto, 'Juridical Review Adjustment of Legal Entity Political Parties and New Political Parties to Become Legal Entities Based on Law Number 2 of 2011 Concerning Political Parties'.

[31] Lukman Hakim, Zahra Nafika Hakim, and Anggreany Haryani Puteri, 'Kesulitan Mempertanggungjawabkan Pidana Partai Politik Sebagai Subyek Hukum Dalam Perkara Tindak Pidana Korupsi', *Jurnal Hukum Sasana* 11, no. 1 (2025): 55–71, https://doi.org/https://doi.org/10.31599/sasana.v11i1.3909.

[32] mulyati dan Santoso, "Political Party's Criminal Liability In Indonesia."

[33] Kukuh Dwi Kurniawan and Dwi Ratna Indri Hapsari, 'Pertanggungjawaban Pidana Korporasi Menurut Vicarious Liability Theory', *Jurnal Hukum IUS QUIA IUSTUM* 29, no. 2 (2022): 324–346, https://doi.org/https://doi.org/10.20885/iustum.vol29.iss2.art5.

[34] Linda Volonino, 'Vicarious Liability', EBSCO, 2022.

[35] Abdul Wahid, Andi Intan, and Nurhayati Mardin, 'Model Vicarious Liability Partai Politik Terhadap Tindak Pidana Pemilu', *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 1 (2020): 180–189, https://doi.org/https://doi.org/10.29303/ius.v8i1.1063.

[36] Rohit Dhingra and Shruti Kakkad, 'INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES Corporate Criminal Liability: An Emerging Issue', *International Journal of Law Management & Humanities* 4, no. 2 (2021): 1003–14, https://doi.org/http://doi.one/10.1732/IJLMH.26231.

[37] Herbert F. Weisberg, 'A Multidimensional Conceptualization of Party Identification', *Political Behavior* 2, no. 33–60 (1980), https://doi.org/https://doi.org/10.1007/BF00989755.

In Indonesia, legal instruments supporting such attribution already exist, although they are rarely enforced. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, for example, defines a corporation as an association, regardless of whether it has a legal entity or not, which includes political parties. Article 6, paragraph (1) of this law allows corporations to be held criminally liable for corruption cases intended to benefit the organization. Similarly, Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning Corruption Crimes, permits the prosecution of corporations, where a legal entity is entitled to be held accountable, if referring to Article 20, if the corruption was committed by it or on its behalf.

Furthermore, Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations strengthens the procedural pathway for demanding such accountability. The regulation stipulates that management, or individuals who de facto control an organization, can be held accountable in their representative capacity. Article 25 of the regulation specifically states that the court can impose principal and additional sanctions on corporations, including fines, asset seizure, and even dissolution in cases of serious violations. Given that political parties are functionally and legally corporations, there is no doctrinal impediment to applying this provision to them.

Another important concept is corporate culture theory, which focuses on the organizational environment and internal systems that permit, encourage, or fail to prevent criminal acts.[38] This theory does not require a finding of intent (mens rea) in the traditional sense. Instead, it evaluates whether a party's practices, culture, and leadership contribute to a permissive environment for illegal behavior.[39] This is particularly relevant in political parties where informal norms such as “party loyalty” or “solidarity” can shield wrongdoing from scrutiny.[40] According to this perspective, political parties that lack internal accountability, oversight, or compliance mechanisms may be considered complicit in the criminal acts of their members, especially when there is institutional silence or tolerance of such acts.

Legal experts have recognized the potential for applying these theories to political parties in Indonesia. For example, Hassbulah F. Sjawie[41], In his work on corporate criminal liability in corruption, argues that the institutional dimension of crime must be addressed through a legal framework that goes beyond individual accountability and encompasses the

[38] Benjamin van Rooij and Adam Fine, ‘Toxic Corporate Culture: Assessing Organizational Processes of Deviancy’, *Administrative Sciences* 8, no. 3 (2018), https://doi.org/10.3390/admsci8030023.

[39] Darryl Evan Brouwer, ‘Corporate Culture Model Sebagai Alasan Penghapus Pidana Korporasi: Evaluasi Terhadap Kodifikasi Hukum Pidana Nasional’, *Tanjungpura Law Journal* 9, no. 1 (2025): 33–59, https://doi.org/10.26418/tlj.v9i1.76606.

[40] Marion Reiser, ‘The Informal Rules of Candidate Selection and Their Impact on Intra-Party Competition’, *Party Politics* 30, no. 1 (2023): 85–95, https://doi.org/https://doi.org/10.1177/13540688231172336.

[41] Hasbullah F. Sjawie, *Pertanggungjawaban Pidana Korporasi Pada Tindak Pidana Korupsi*, 1st ed. (Jakarta: Kencana, 2015).

organizational context. He asserts that political parties should not use their legal status as a shield from accountability when they profit from the actions of their agents.

The development of the corporate crime doctrine in Indonesia must involve political parties, especially considering their legal recognition and influence on public institutions.[42] They warned that failure to apply this doctrine would contribute to the erosion of public confidence in law enforcement and the justice system.[43]

Despite these theoretical justifications and legal opportunities, enforcement remains minimal. In practice, the Indonesian legal system focuses almost exclusively on individual accountability, even when political party structures directly benefit from criminal acts.[44] This discrepancy points to a broader problem of selective institutional law enforcement, where legal doctrine is present in texts but poorly applied. The reluctance to prosecute political parties may be politically motivated, but it is legally unsound. Once recognized as legal entities, political parties also face legal obligations—including the potential for sanctions, fines, or, in extreme cases, dissolution when their behavior violates criminal norms.[45]

In conclusion, the theoretical basis for holding political parties criminally liable in Indonesia is already available through the established doctrine of corporate liability. The theories of vicarious liability, identification, and corporate culture all provide strong pathways for attributing criminal liability to political entities. These doctrines have been integrated into Indonesia's legal and regulatory framework, particularly through the Anti-Corruption Law, the Anti-Money Laundering Law, and PERMA No. 13/2016. What remains is not the need for new theories or laws, but rather the political and institutional will to enforce them against powerful actors. Equitable application of the law demands that political parties—no less than corporations or individuals—be held accountable when they enable or benefit from criminal acts.

3.3 The Role of the Constitutional Court in Dissolving Parties

The Constitutional Court of Indonesia (Mahkamah Konstitusi) holds a special and exclusive mandate regarding the dissolution of political parties. This authority is rooted in Article 24C paragraph (1) of the 1945 Constitution, the decision of which is absolute and mandatory, and the authority to adjudicate at the first and final levels is a mandate held by the Constitutional Court, including regarding several matters related to the dissolution of

[42] Mulyati dan Santoso, "Political Party's Criminal Liability In Indonesia."

[43] Muhammad Mutawalli Mukhlis et al., 'Development Of Political Parties By The State: From Oligarchy To Democratization In Indonesia', *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 10, no. 1 (2 February 2025), https://doi.org/10.22373/petita.v10i1.767.

[44] Diana Lukitasari Hartiwiningsih Subekti, Rehnalemken Ginting, and Dian Esti Pratiwi, 'Criminal Liability Political Parties in Criminal Acts of Corruption: Indonesia Korea Comparison', *IJCLS* 6, no. 2 (2021), https://doi.org/https://doi.org/10.15294/ijcls.v6i2.33917.

[45] Nathaniel Persily and Bruce E Cain, 'The Legal Status of Political Parties: A Reassessment of Competing Paradigms', *Columbia Law Review* 100, no. 3 (2000), https://doi.org/10.2307/1123502.

political parties.[46] This function is strengthened by Article 68 of Law Number 24 of 2003 concerning the Constitutional Court or Law Number 8 of 2011, which clarifies the authority of the Constitutional Court in disbanding political parties that play an important role in protecting the constitutional order of the state.

The dissolution of a political party is not an ordinary judicial matter, but rather an extraordinary constitutional remedy. From the perspective of constitutional theory, the Court's authority in this matter is based on the idea of constitutional defense—that is, ensuring that political actors do not deviate from the values and structures enshrined in the Constitution.[47] Political parties, as institutions competing for power and shaping public policy, must adhere to Pancasila, uphold national unity, and respect the rule of law. When a party's activities are deemed to contradict these fundamental principles, the state has the constitutional right to seek its dissolution through the Constitutional Court. This role positions the Court as the guardian of democratic pluralism, not by eliminating diversity of opinion, but by ensuring that competition between political forces remains within constitutional boundaries.[48]

While the Constitutional Court's role can be initiated through formal petitions, it is not limited to the government. Constitutional Court Regulation No. 12 of 2008 outlines the procedural framework for cases, including those initiated by the Attorney General and relevant ministers. However, other parties, such as individuals or other state bodies, may also initiate cases, depending on the specific legal framework and the nature of the case. The Constitutional Court's role also begins through decisions made by the court itself, for example, in cases where the court initiates an investigation or review of a law.[49] These strict procedural requirements emphasize the principle of state accountability—the Court cannot act ex officio, and its authority is only triggered when the executive branch formally requests it. This procedural filter reflects Indonesia's cautious approach to party dissolution, designed to avoid arbitrary or politically motivated use of judicial mechanisms against opposition or dissenting groups. It also reflects the principle of separation of powers, where the Court serves as an arbiter, not an initiator, of constitutional disputes.

The Constitutional Court's jurisprudence on party dissolution is still minimal, and no political party has ever been dissolved through this process since the Reformation era

[46] Muhammad Rizhal Djunu, Lauddin Marsuni, and Muh. Rinaldy Bima, 'Kewenangan Mahkamah Konstitusi Republik Indonesia Terhadap Pembubaran Partai Politik', *Journal of Lex Generalis (JLG)* 3, no. 11 (2022): 1790–1806.

[47] Emilio Alfonso Garrote Campillay, 'Constitution and Judicial Review: Comparative Analysis', in *Rule of Law, Human Rights and Judicial Control of Power* (Springer, 2017).

[48] Authors and Luthfi Widagdo Eddyono, 'The Constitutional Court and Consolidation of Democracy in Indonesia', *Jurnal Konstitusi* 15, no. 1 (2018): 1–26, https://doi.org/https://doi.org/10.31078/jk1511.

[49] Rosalina Indah Sari, Hendri Hidayat, and Ratna Sari, 'The Role of the Constitutional Court in Resolving Election Disputes From the Perspective of Justice', *International Journal of Sociology, Policy and Law* 04, no. 02 (2023): 113–28.

began.[50] These institutional constraints can be understood as a reflection of a post-authoritarian legal culture, where the ruling regime previously manipulated judicial involvement in party politics. Therefore, the current system incorporates procedural safeguards to prevent abuse of judicial authority while maintaining the Court's authority as the final arbiter of constitutionality.[51] However, this does not diminish the symbolic and legal importance of the Court's dissolution power, which acts as a constitutional threat of last resort—a deterrent to parties that might cross the line into activities contrary to the state's ideology or the Constitution.

From a normative perspective, the Constitutional Court's authority to dissolve must be read in conjunction with the broader framework of Indonesia's political and legal system.[52] The basic logic is that political parties are not simply private associations; they are public institutions with constitutional responsibilities.[53] Unlike civil society organizations or corporations, political parties are actors directly involved with state power and are granted privileges—including public funding, voting access, and media regulation rights—that are justified only if they remain loyal to constitutional agreements.[54] Therefore, the role of the Constitutional Court not only includes assessing violations of the law, but also interpreting whether the continued existence of political parties is inconsistent with the integrity of the constitutional order.

Academic commentators such as Jimly Asshiddiqie[55] argue that the Court's function in dissolving political parties must be guided by the principles of constitutional justice, rather than merely legalistic standards. In this regard, the Court must not only uphold technical violations, but also evaluate whether a party has violated the constitutional spirit—namely, values such as unity in diversity, adherence to democratic procedures, and the protection of state ideology. Such an interpretation requires not only a textual interpretation of the law, but also moral reasoning, as the Court must weigh the

[50] Bagaskara Rahmat Hidayat dan Maria Madalina, "Analisis pembubaran partai politik oleh mahkamah konstitusi," *Res Publica* 8, no. 3 (2024), https://doi.org/https://doi.org/10.20961/respublica.v8i3.90012.

[51] Rahmad Satria, 'Judicial Review and Its Role in Safeguarding Constitutional Rights in Modern Democracies', *Riwayat Educational Journal of History and Humanities* 8, no. 1 (2025): 860–71, https://doi.org/10.24815/jr.v8i1.44832.

[52] Winasis Yulianto and Dyah Silvana Amalia, 'Authorities Of The Constitutional Court In Dissoluting Political Parties', *International Journal of Educational Research & Social Sciences* 4, no. 3 (2023): 590–597, https://doi.org/https://doi.org/10.51601/ijersc.v4i3.666.

[53] Tarunabh Khaitan, 'Political Parties in Constitutional Theory', in *The Entrenchment of Democracy: The Comparative Constitutional Design of Elections, Parties and Voting* (Cambridge University Press, 2024), 63–99.

[54] Ekaterina R Rashkova and Ingrid van Biezen, 'The Legal Regulation of Political Parties: Contesting or Promoting Legitimacy?', *International Political Science Review* 35, no. 3 (2014): 265–74, https://doi.org/https://doi.org/10.1177/0192512114533981.

[55] Jimly Asshiddiqie, *Hukum Tata Negara & Pilar-Pilar Demokrasi*, 3rd ed. (Jakarta: Sinar Grafika, 2015).

constitutional consequences of silencing a political institution against the dangers posed by its continued operation.[56]

Furthermore, the role of the Constitutional Court reflects the influence of militant democratic theory, which enables democratic regimes to defend themselves against actors who exploit democratic freedoms to dismantle democracy from within.[57] The inclusion of this doctrine within the Constitutional Court's jurisdiction demonstrates Indonesia's recognition of the possibility of political parties acting as vehicles for anti-constitutional agendas, whether through ideology, violence, or a fundamental rejection of constitutional norms. Therefore, the Constitutional Court must be prepared to exercise this authority when a threshold is met, even if it is politically controversial or institutionally sensitive.[58]

In practice, the role of the Constitutional Court in dissolving parties also reflects the balance between judicial independence and political prudence.[59] Because the authority to dissolve political parties carries the risk of restricting political expression and diminishing democratic pluralism, the Court is expected to act with extreme caution, legal clarity, and thoroughness of evidence. If a party's existence fundamentally contradicts the 1945 Constitution, its dissolution can only be carried out on the basis of strong and irrefutable evidence. This evidentiary threshold is deliberately set high and requires the Court to interpret both the intent and consequences of a party's actions—whether its behavior poses a clear and present danger to the nation's fundamental principles.

In conclusion, the Constitutional Court plays a vital role in upholding Indonesia's constitutional democracy through its authority to dissolve political parties that violate the constitutional order. Its role is based on a well-designed legal and theoretical framework designed to protect democratic values without allowing for the abuse of judicial or political power. Although the Court's involvement in the dissolution of political parties remains rare, its existence as the sole institution authorized to adjudicate such cases demonstrates Indonesia's commitment to constitutional supremacy, institutional checks and balances, and the upholding of democratic legitimacy. The next task lies in refining the criteria and developing consistent legal standards so that this authority, when necessary, can be exercised with legitimacy, authority, and fidelity to the Constitution.

3.4 Comparative Perspective: Lessons from International Practice

The dissolution of political parties as a legal mechanism inevitably raises fundamental questions about the relationship between democracy, the rule of law, and the

[56] T. R. S. Allan, 'Law, Reason, and Justice: A Defence of the Declaratory Theory of Judicial Decision', *Jurisprudence*, 2025, 1–25, https://doi.org/https://doi.org/10.1080/20403313.2025.2473166.

[57] Giovanni Capoccia, 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation', *Annual Review of Law and Social Science* 9 (2013).

[58] Philipp Schroeder, 'Pushing Boundaries: How Lawmakers Shape Judicial Decision-Making', *Comparative Political Studies* 55, no. 14 (2022): 2447–79, https://doi.org/https://doi.org/10.1177/0010414022108964.

[59] Djunu, Marsuni, and Bima, 'Kewenangan Mahkamah Konstitusi Republik Indonesia Terhadap Pembubaran Partai Politik'.

eradication of corruption. Although the Indonesian legal framework emphasizes ideological threats as the primary justification for party dissolution, this approach does not fully address the complex reality of systemic corruption embedded in party structures. To critically evaluate the adequacy and direction of Indonesia's legal response, it is important to situate this discussion within a broader comparative context. Different countries, shaped by different historical trajectories, constitutional traditions, and legal doctrines, have developed diverse approaches to regulating and, in exceptional cases, dissolving political parties—both as a preventative measure and as a punitive response to institutional violations. Germany, Turkey, and South Korea provide illustrative examples of how democratic countries have navigated the delicate balance between protecting democratic integrity and avoiding excessive authoritarianism. Their experiences provide theoretical and empirical insights that can inform the ongoing debate in Indonesia about aligning democratic resilience with anti-corruption imperatives.

German

The German approach to regulating political parties demonstrates a sophisticated and theory-based balance: preserving democratic pluralism while actively preventing institutional corruption, especially through party funding and organizational accountability.[60] Under Article 21 of the Basic Law, the Federal Constitutional Court limits the dissolution of political parties to those that "actively and aggressively" threaten the democratic order, resulting in only two bans in post-war history, namely the Reich Socialist Party (1952) and the Communist Party (1956).[61] This high threshold reflects the liberal-democratic principle of tolerance—inspired by Karl Popper—which allows pluralism but prohibits parties that pose an existential threat to democracy.[62]

English: While structural dissolutions remain rare and focused on ideology, Germany has developed robust measures to regulate party funding—viewed through a theoretical lens as crucial to maintaining democratic integrity. Following a landmark 1992 ruling, public funding was capped so that no party could receive more than 50 percent of its income from state sources, ensuring that parties maintain legitimacy through electoral support.[63] In the 1993 Party Law reform, transparency in private donations became mandatory—full disclosure for large donations, incentives for small ones—transforming

[60] Catarina Santos Botelho and Nuno Garoupa, 'Regulating Parties by Constitutional Rules in Liberal Democracies', *German Law Journal* 24, no. 9 (2023): 1648–76, https://doi.org/10.1017/glj.2023.117.

[61] Michaela Hailbronner, 'Combatting Malfunction or Optimizing Democracy? Lessons from Germany for a Comparative Political Process Theory', *International Journal of Constitutional Law* 19, no. 2 (2021): 495–514, https://doi.org/https://doi.org/10.1093/icon/moab043.

[62] Angela K. Bourne, 'From Militant Democracy to Normal Politics? How European Democracies Respond to Populist Parties', *European Constitutional Law Review* 18, no. 3 (2022): 488–510, https://doi.org/10.1017/S1574019622000268.

[63] Anthony Comfort and Francois-Xavier Camenen, 'Measures to Prevent Corruption in EU Member States', 1998.

previously tolerated, opaque "grey" practices into non-negotiable norms.[64] Scholars argue this reflects an ideational shift: undisclosed donations transitioned from being seen as beneficial to being perceived as inherently corrupt, an attitude catalyzed by smaller parties and reinforced by court rulings.[65]

It is important to examine how the regulatory principles have been applied in practice through major political funding scandals and judicial responses to better understand how these theoretical commitments are operationalized in the German legal and political system.

1) Flick scandal (early 1980s): Flick KG channeled around 26 million DM to the CDU, SPD, FDP, and CSU, exploiting tax breaks for "political cultivation." Minister Otto Graf Lambsdorff was convicted of tax evasion, not bribery.[66] The scandal exposed structural vulnerabilities and sparked debate about corporate influence and party dependence—even triggering a failed amnesty attempt.
2) CDU Donation/Schreiber Scandal (1990s): Arms dealer Karlheinz Schreiber channeled unreported donations (mainly €1 million) through a slush fund to senior CDU figures such as Walther Leisler Kiep and Wolfgang Schäuble.[67] The party's extensive "secret accounts" structure, revealed through a parliamentary inquiry, triggered fines totaling over DM 41 million and the political downfall of Kohl and Schäuble, although their criminal sentences remained limited.
3) Azerbaijan Donation Case (2012): €28,000 from Azerbaijan's state oil company, Socar, was flagged and seized, reflecting the collaboration between law enforcement and internal oversight to uphold sustainability norms.[68]

These cases underscore the prevailing theoretical model: Germany refuses to dissolve parties with broader ideological affiliations, but instead applies regulations and financial sanctions to legitimize corrupt funding. Fines, public disclosures, internal party restructuring, criminal referrals, and subsequent legislative reforms constitute the matrix of responses.

Contemporary practices underscore the evolution from tolerance to prevention. In 2017–2018, the AfD faced fines (around €500,000) and formal audits for hidden

[64] Muhammad Mutawalli Mukhlis et al., 'Law Reform in Parliamentary Democratization: A Comparative Study of Legislative Terms in Indonesia, Philippines, and the United States of America', *Journal of Law and Legal Reform* 6, no. 3 (31 July 2025): 1079–1122, https://doi.org/10.15294/jllr.v6i3.20664.

[65] Michael Koß, 'When (and How) Ideas Become Arguments: The Regulation of Party Donations in Germany', *Italian Political Science Review/Rivista Italiana Di Scienza Politica* 55, no. 1 (2025): 25–38, https://doi.org/10.1017/ipo.2023.31.

[66] Angelos Giannakopoulos, Konstadinos Amano, and Maras Shinya, 'Party Financing in Germany and Japan: Comparative Perspectives on Political Corruption', *EJCJS* 9, no. 4 (2009): 1–28.

[67] Melanie Amann et al., 'Merkel's Conservatives Mired in Scandal and Incompetence', SPIEGEL International, 2021.

[68] Timothy Jones, 'Germany's CDU "Received Money from Azerbaijan"', Deutsche Welle, 2017.

donations—a testament to the system's resilience.[69] Furthermore, data from 2025 reveals high-value business donations to the CDU, FDP, and SPD.[70] Civil society watchdogs continue to advocate for lowering the disclosure threshold to further deter corruption.

German legal theory thus focuses on distinguishing existential threats (ideological dangers)—which remain the sole trigger for dissolution—from institutional dangers (financial corruption)—which are addressed through transparency, accountability, and sanctions.[71] This dual approach both reinforces pluralism and limits the scope for undue influence. It allows the party system to absorb shocks, enforce norms, and evolve, thus preserving the openness of democracy, but not its vulnerability to capture by money.

Turkey

In Turkey, the dissolution of political parties has become a weapon used not only to counter anti-democratic ideologies but also, at times, to combat corruption. However, corruption manifests in nuanced and institutionally embedded ways. The literature on Turkish politics often frames this mechanism within a broader theory of neopatrimonialism, in which formal institutions serve as conduits for clientelistic power, linking public office to private gain.[72] Under Erdoğan's AKP, state institutions—the central bank, procurement offices, regulatory bodies—have become increasingly personalized, and loyalty, rather than merit, has become the key to resource distribution, creating fertile ground for institutionalized cronyism.[73]

In this system, corruption is rampant—petty graft is declining, but systemic cronyism is rampant. A high-profile case—a 2013 corruption investigation involving senior AKP officials and Erdoğan's son—triggered what Erdoğan called a "judicial coup." The response: political purges of the police and judiciary under omnibus reforms, which effectively neutralized independent oversight.[74] This episode underscores how anti-corruption mechanisms, when controlled by the executive, can backfire, serving as a tool to strengthen power.

However, Türkiye's legal framework does allow for the dissolution of parties on grounds related to corruption: "unethical behavior" and illegal funding.[75] The 1998 Lost Trillion case led to the Welfare Party being banned for embezzling state grant funds through forged documents—an institutional-level financial scandal with real political

[69] Deutsche Welle, 'AfD's Weidel under Investigation', Deutsche Welle, 2018.

[70] SPIEGEL International, 'CDU Bekommt Fast Zehnmal so Viele Großspenden Wie Die SPD', SPIEGEL International, 2025.

[71] Bohdan Bernatskyi, 'Why and When Democracies Ban Political Parties: A Classification of Democratic State Orientations to Party Bans', *Comparative European Politics* 22 (2024): 754–791, https://doi.org/https://doi.org/10.1057/s41295-024-00381-9.

[72] Seref Turkmen, 'The Fragility of Turkish Political Structures – The AKP Closure Case', *ESI Preprints* 14 (2023): 485.

[73] Eda Bektas, 'Neopatrimonial Rule through Formal Institutions: The Case of Turkey', *Government and Opposition*, 2025, 1–22, https://doi.org/10.1017/gov.2024.36.

[74] Berk Esen, 'Judicial Transformation in a Competitive Authoritarian Regime: Evidence from the Turkish Case', *Law & Policy* 47, no. 1 (2024), https://doi.org/https://doi.org/10.1111/lapo.12250.

[75] Parliamentary Assembly, 'The Functioning of Democratic Institutions in Turkey', *Resolution*, 2008.

consequences.[76] Similarly, the 2008 AKP closure trial, although motivated by secular concerns, included findings of corrupt financial conduct, resulting not in dissolution but in a reduction of its funds by half.[77] In both cases, legal accountability does not necessarily mean institutional dissolution, which illustrates the selective and strategic use of dissolution by the courts.

This pattern continued with the closure of the Kurdish-oriented DTP in 2007–2009, which was justified on the basis of national unity and terrorism, rather than real corruption.[78] However, the conflation of ideological and financial violations within the framework of state justification suggests that corruption, while not always in the spotlight, underlies many cases of dissolution.

Theoretically, the Turkish experience illustrates how party disbandment operates at the intersection of democratic consolidation and executive dominance. According to Güney and Başkan, the disbandment of religiously oriented parties only promotes superficial democratic stability. In contrast, the banning of ethnically oriented parties (such as the DTP) more directly threatens core democratic values.[79] This dynamic suggests that when corruption is embedded within the ruling party apparatus, traditional legal instruments such as dissolution become politically unsafe to use—yet remain powerful when used against the opposition.

This theoretical ambiguity between legal norms and political strategies becomes more apparent when examined through specific examples of how the Turkish state has exercised—or failed to exercise—its authority to dissolve political parties. The case studies reinforce this tension:

1) Welfare Party (1998–2000): Indicted for falsifying financial documents related to public grants; the Constitutional Court banned it and disqualified senior officials.[80]
2) AKP (2008): Faced closure on grounds of anti-secular activities and financial irregularities, but escaped dissolution; instead, the party experienced a reduction in state funding.[81]
3) 2013 Corruption Inquiry: Widespread anti-corruption investigations were halted through an executive overhaul of judicial oversight, demonstrating the collapse of institutional autonomy in the face of elite corruption.[82]

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[76] Hurriyet Daily News, 'Former President Gül Testifies in "Lost Trillion Case"', Hurriyet Daily News, 2014.

[77] Güncelleme Tarihi, 'High Tension Returns to Turkish Domestic Affairs in 2008', Hurriyet, 2009.

[78] Jared Malsin and Elvan Kivilcim, 'Turkish Police Detain Three More Mayors From Party Opposed to Erdogan', The Wall Street Journal, 2025.

[79] Aylin Güney and Filiz Başkan, 'Party Dissolutions and Democratic Consolidation: The Turkish Case', *South European Society and Politics* 13, no. 3 (2008): 263–281, https://doi.org/https://doi.org/10.1080/13608740802346569.

[80] Chris Morris, 'Turkey Bans Islamist Party', The Guardian, 1998.

[81] Carol Migdalovitz, 'Turkey: Update on Crisis of Identity and Power', 2008.

[82] Esen, 'Judicial Transformation in a Competitive Authoritarian Regime: Evidence from the Turkish Case'.

From a theoretical perspective, the Turkish framework models the gradual application of party dissolution: heavy-handed when used against weak or opposition parties, and hesitant when the ruling party itself is involved.[83] This framework serves as an instrument of last resort—activated when ideological deviation can be legally deterred, but often avoided when the goal is to maintain political hegemony.

In anti-corruption theory, the dissolution of political parties is most effective when supported by a strong and independent institution that is able to distinguish between ideological threats and financial misappropriation.[84] Türkiye's experience shows that, without judicial independence and transparency in party funding, the apparatus becomes subject to political interests, which hinders democracy, rather than corruption.

To shift from an instrument of control to an instrument of accountability, Turkey needs reforms, including strong transparency and audit mechanisms in party funding, separation of the judiciary's independence from executive interference, and a legal threshold that mandates dissolution only for proven institutional-level corruption, backed by due process and oversight.

South Korea

South Korea provides a compelling model for understanding how democracies address political corruption within party systems without resorting to formal dissolution mechanisms.[85] In contrast to countries that allow the dissolution of political parties on general grounds such as corruption, South Korea takes a more restrained but arguably more effective approach, rooted in the principles of constitutional democracy (헌법적). *(민주주의)* and democratic accountability.[86] Within this theoretical framework, political parties are not merely private associations in public perception, but rather quasi-public institutions operating within and under the confines of a democratic constitutional order. Thus, while party dissolution is constitutionally permitted under certain circumstances, it is implemented with great care to safeguard democratic pluralism.

The legal basis for party dissolution in South Korea is primarily found in Article 8(4) of the 1987 Constitution, which allows the Constitutional Court to order the dissolution of a political party if its aims or activities are contrary to the basic order of democracy.[87] However, this provision has only been used once in South Korea's democratic era—

[83] Düzgün Arslantaş and Şenol Arslantaş, 'Keeping Power through Opposition: Party System Change in Turkey', *New Perspectives on Turkey* 62 (2020): 27–50, https://doi.org/10.1017/npt.2020.1.

[84] Jose Maria Marin Aguirre, 'Literature Review: Corruption and One-Party Dominance', *Transparency International*, 2015.

[85] Byung-Deuk Woo, Mi-son Kim, and Tracy Osborn, 'Gendered Punishment? How the Corruption of Female Politicians Affects Public Opinion of Female Political Leadership', *International Political Science Review*, 2025, https://doi.org/https://doi.org/10.1177/01925121241302776.

[86] Sayuri Umeda, 'South Korea: Unprecedented Claim Filed with Constitutional Court to Dissolve a Political Party', Library of Congress, 2013.

[87] Sungjin Kim, 'Dissolution of Political Party: Criteria Adopted by the Korean Constitutional Court and Lessons from the European Court of Human Rights', *Journal of Korean Law* 15, no. 2 (2016): 297–323.

specifically in a 2014 case involving the United Progressive Party (UPP).[88] The party is accused of having pro-North Korean sympathies and organizing activities deemed to threaten the basic order of a free democracy.[89] In its historic ruling (Constitutional Court Decision 2013 헌다 1, December 19, 2014), the Constitutional Court emphasized that political parties must not only uphold but also actively support democratic values.[90] The decision relies heavily on the idea of "militant democracy"—a concept originally rooted in post-war German constitutionalism, which holds that democracies have the right to defend themselves against internal threats posed by anti-democratic actors, including political parties.[91] While the UPP case did not involve corruption, it sets a precedent for interpreting political party behavior through a lens that considers broader threats to democratic integrity, potentially encompassing systemic corruption if framed as undermining democratic trust and institutions.

Rather than relying on outright dissolution, South Korea's anti-corruption enforcement model focuses on individual criminal liability, institutional transparency, and electoral accountability, which together serve to delegitimize and ultimately dissolve corrupt political entities.[92] Over the past three decades, a series of high-profile corruption cases have severely impacted major political parties, leading to their reconfiguration, mergers, or voluntary dissolution. For example, the Grand National Party (GNP)—the dominant conservative force—was deeply implicated in an illegal campaign financing scandal involving former President Lee Myung-bak, who was subsequently sentenced to 17 years in prison in 2020 for corruption and embezzlement involving state funds and conglomerates.[93] Similarly, President Park Geun-hye, also from the GNP's successor, the Saenuri Party, was impeached and convicted in 2017–2018 for bribery and abuse of power.[94] These scandals directly impacted the legitimacy of the ruling party, which suffered a crushing election defeat and changed its name to the Liberty Korea Party, and later to the People Power Party. Although these parties were not formally dissolved by

[88] Hyun Lee, 'The Erosion of Democracy in South Korea: The Dissolution of the Unified Progressive Party and the Incarceration of Lee Seok-Ki', *Asia-Pacific Journal* 12, no. 52 (2014): 5, https://doi.org/10.1017/S1557466014028344.

[89] BBC News, 'South Korea Court Bans "pro-North" Political Party', BBC News, 2014.

[90] JunYoung So, 'On the Verge of Freedom of Expression and National Security', The McGill International Review, 2015.

[91] Anthoula Malkopoulou and Ludvig Norman, 'Three Models of Democratic Self-Defence: Militant Democracy and Its Alternatives', *Political Studies* 66, no. 2 (2017): 442–58, https://doi.org/https://doi.org/10.1177/0032321717723504.

[92] Thomas Kalinowski, 'Trends and Mechanisms of Corruption in South Korea', *The Pacific Review* 29, no. 4 (2016): 625–645, https://doi.org/https://doi.org/10.1080/09512748.2016.1145724.

[93] Hyung-Jin Kim, 'South Korea's Supreme Court Upholds 17-Year Jail Term for Ex-President Lee', The Diplomat, 2020.

[94] BBC News, 'Park Geun-Hye: South Korea's Ex-President Granted Government Pardon', BBC News, 2021.

court ruling, the combined effect of public protests, court rulings, and media scrutiny resulted in their political marginalization and organizational transformation.

Theoretically, South Korea's approach to corruption in political parties reflects a "horizontal accountability" model, in which oversight is carried out by independent institutions such as the Audit and Inspection Agency, the Prosecutor General's Office, and the National Election Commission (NEC).[95] These bodies operate under legal mandates, specifically the Political Funds Act, the Public Officials Election Act, and the Anti-Corruption Act, all of which regulate campaign financing, political donations, and abuse of power. Violations can result in severe penalties, including imprisonment, fines, and restrictions on political candidacy. According to Jong-sung You[96], Korea's ability to effectively prosecute even the highest political figures without bringing down the party system illustrates a mature form of democratic accountability—one in which democratic resilience is maintained even in the face of elite-level abuses.

Furthermore, South Korean civil society plays a crucial role in exposing and responding to political corruption. The 2016–2017 Candlelight Protests, which mobilized millions of citizens to demand President Park's resignation, were a powerful demonstration of vertical accountability, in which the public itself upheld democratic legitimacy.[97] This movement directly led to his impeachment, trial, and conviction. The protests also pressured institutions to act decisively against corrupt practices and catalyzed party restructuring. In this context, South Korea illustrates how a functioning democratic ecosystem, comprised of an active civil society, a robust media, an independent judiciary, and responsive institutions, can act collectively to punish systemic corruption without having to dismantle the formal structures of political parties.

While the South Korean model falls short of routinely disbanding corrupt parties, it demonstrates that institutional and reputational sanctions can be just as effective, if not more so, in ensuring political accountability. This system aligns with the principle of proportionality in constitutional law, which states that state interference with political rights—such as banning or disbanding parties—must be justified by a concrete and direct threat.[98] Thus, unless corruption is proven so entrenched that it endangers the democratic order itself, states prioritize legal and institutional responses over dissolution. The South Korean case thus offers an important lesson for countries like Indonesia. Rather than relying on dissolution as a primary tool, efforts should focus on enforcing anti-corruption measures through transparent institutional mechanisms that hold parties and their elites accountable, while preserving a competitive democratic order.

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[95] Sunkyoung Park, 'Vertical Accountability in the Case of South Korea', 2024.

[96] Jong-Sung You, *Democracy, Inequality, and Corruption: Korea, Taiwan and the Philippines Compared* (Cambridge: Cambridge University Press, 2015).

[97] Jamie Doucette, 'The Occult of Personality: Korea's Candlelight Protests and the Impeachment of Park Geun-Hye', *Journal of Asian Studies* 76, no. 4 (2017): 851–860, https://doi.org/https://doi.org/10.1017/S0021911817000821.

[98] Anna V. Nikitina, 'Principle of Proportionality of Constitutional Legal Responsibility of Political Parties', *DOAJ* 3, no. 1 (2019): 33 – 43, https://doi.org/https://doi.org/10.24147/2542-1514.2019.3(1).33-43.

3.5 Balancing Democracy and Accountability

In constitutional democracies, the tension between maintaining democratic openness and upholding accountability presents a normative dilemma, particularly when political parties—central instruments of democratic expression—are implicated in systemic corruption. This tension can be examined through the perspectives of democratic institutionalism and constitutionalism, both of which recognize political parties as irreplaceable intermediaries between the state and society. The framework of democratic institutionalism, as proposed by Morlino[99], emphasizes that accountability and responsiveness must go hand in hand; weakening either one means weakening democracy itself.

The key challenge is ensuring that legal mechanisms for disbanding parties do not become tools of political repression, while still holding parties accountable for institutionalized violations. In Indonesia, the legal basis for disbanding political parties is based on Article 24C of the 1945 Constitution and Law No. 2 of 2008. However, these provisions are largely oriented toward ideological threats—such as communist or separatist propaganda—rather than financial or structural violations like corruption. This discrepancy demonstrates a narrow interpretation of constitutional threats, ignoring the impact of entrenched political corruption on democratic legitimacy, which is equally destabilizing.

Theoretically, constitutional democracy does not prevent the dissolution of a party when a party undermines the constitutional order through illegal or unethical institutional behavior. Karl Loewenstein[100]'s seminal work on militant democracy argues that democracies must defend themselves against actors who exploit democratic procedures to subvert democratic values. From this perspective, systemic corruption within political parties can be seen as a violation of the public trust that democratic institutions are supposed to uphold. If political parties function not as representatives of the people but as corrupt entities, they no longer fulfill their democratic role and are subject to legal sanctions, including dissolution.

Real-world cases reinforce this theoretical position. In South Korea, while formal party dissolutions are rare, the United Progressive Party (UPP) was dissolved in 2014 by the Constitutional Court for undermining the democratic order—initially for ideological reasons, but increasingly linked to illicit political operations and the subversion of democratic norms.[101] While not directly related to corruption, the case demonstrates that constitutional courts can interpret "threats to democracy" functionally. In Turkey, the Constitutional Court has repeatedly dissolved parties not only for ideological reasons but

[99] Leonardo Morlino, 'What Is a "Good" Democracy?', *Democratization* 11, no. 5 (2004): 10–32, https://doi.org/https://doi.org/10.1080/13510340412331304589.

[100] Karl Loewenstein, 'Militant Democracy and Fundamental Rights', *American Political Science Review* 31, no. 3 (1937): 417–32, https://doi.org/https://doi.org/10.2307/1948164.

[101] Lee, 'The Erosion of Democracy in South Korea: The Dissolution of the Unified Progressive Party and the Incarceration of Lee Seok-Ki'.

also for violations of democratic principles, including misuse of public funds and illegal financing, as seen in the cases of the Welfare Party and the Democratic Society Party.[102]

In Germany, the Federal Constitutional Court's handling of party bans under Article 21(2) of the Basic Law sets a high threshold, emphasizing the doctrine of "militant democracy" which targets parties that seek to undermine or eliminate the free democratic order. The 2017 case of the National Democratic Party (NPD) illustrates the principled reluctance to dissolve parties unless their actions pose a real threat, even if the party is found to have anti-democratic ideals.[103] However, the Court also emphasized that misuse of public funds by parties can be subject to severe sanctions, including suspension of state funds, as emphasized in decisions regarding unconstitutional party funding.[104]

These international cases demonstrate that accountability mechanisms can operate effectively without automatically requiring dissolution. Intermediate sanctions—such as financial sanctions, withdrawal of funds, or suspension of political rights—can preserve democratic diversity while still holding the party institutionally accountable. However, in extreme cases where a party becomes a persistent platform for organized corruption, dissolution may be a constitutional necessity.

In the Indonesian context, as described by Tjung and Darmadi[105], the Constitutional Court demonstrates that although the Constitutional Court has the formal authority to dissolve political parties, procedural rigidities and political hesitation render this authority inactive, particularly in corruption cases. Furthermore, criminal courts can impose fines or prison sentences on individuals. Still, they do not have the authority to dissolve institutions that benefit from such crimes, unless the government initiates legal proceedings in the Constitutional Court. This gap reflects an under-theorized understanding of corporate criminal responsibility within political institutions.

A promising theoretical model to address this is the integration of organizational accountability, as developed by Bovens[106]. This model holds not only individuals but also institutions accountable for the actions taken by their agents, especially when there is evidence of organizational benefit or involvement. If political parties systematically tolerate or benefit from corruption by their members, they meet the criteria for organizational accountability.

In conclusion, the way forward involves recalibrating Indonesia's legal framework to recognize that systemic corruption within political parties poses as great a threat to constitutional democracy as ideological extremism. This requires amending existing laws

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[102] Cenap Çakmak and Cengiz Dinç, 'Constitutional Court: Its Limits to Shape Turkish Politics', *Insight Turkey Fall* 12, no. 4 (2010): 69–92.

[103] Jenny Gesley, 'No Prohibition of the National Democratic Party', Library of Congress, 2017.

[104] James Angelos, 'German Court Bans Funding for Extreme-Right Party, Fueling Debate on AfD', Politico, 2024.

[105] Tjung dan Darmadi, "Mekanisme Pembubaran Partai Politik Yang Terbukti Melakukan Tindak Pidana Korupsi Di Indonesia."

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to define corruption as a potential ground for dissolution, ensuring clear procedural safeguards, and leveraging comparative insights to balance accountability with political pluralism. It also calls for a jurisprudential shift in how the Constitutional Court interprets its authority, viewing the protection of democratic integrity not only in ideological but also in institutional terms.

4. Conclusion

This study highlights a critical gap in Indonesia's legal framework. Systemic corruption within political parties is not recognized as a legitimate basis for dissolution despite its devastating impact on democratic integrity. Although political parties are legal entities under Indonesian law, they enjoy structural immunity due to a narrow interpretation of constitutional threats, which are limited to ideological violations.

Based on the theory of militant democracy and corporate criminal liability, as well as comparative practices from Germany, Turkey, and South Korea, entrenched corruption must be treated as an institutional threat to democracy. Other democracies address such threats through both dismantling and strong regulatory sanctions, demonstrating that accountability need not sacrifice pluralism.

Therefore, this article calls for legal reform that includes corruption as a basis for disbanding a party and urges the Constitutional Court to reinterpret its authority. To safeguard democracy and the rule of law, political parties must be held institutionally accountable—not only through criminal prosecution of individuals, but also through mechanisms that address party-level responsibility when corruption is systemic.

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