Kertha Patrika
P-ISSN 0215-899X E-ISSN 2579-9487

Civil Rights Protection of Political Parties as Private Legal Entities: Indonesia and Pakistan Comparative Study

Tia Rahadatul 'Aisyi[1], Anisa Deny Setiawati[2], Febrian Indar Surya Kusuma[3], Qassim Hassan[4]

[1]Faculty of Law, State University of Surabaya, Indonesia,
E-mail: 24111764015@mhs.unesa.ac.id
[2]Faculty of Law, State University of Surabaya, Indonesia,
E-mail: anisasetiawati@unesa.ac.id
[3]Faculty of Law, State University of Surabaya, Indonesia,
E-mail: febriankusuma@unesa.ac.id
[4] Bahria University, Pakistan,
E-mail: qasimhassan1020@gmail.com

Article Info

Submitted: 08-06-2026
Accepted: 21-07-2026
Published:30-08-2026

Keywords:
Constitutional Court, Performance Restriction, Private Legal Entity, Political Parties, Pakistan Comparison.

Abstract

Political parties in the Indonesian legal system act not only as political entities but also as private legal entities (rechtspersoon) possessing absolute civil rights. However, Article 40 of Law No. 10/2016 on Regional Elections, which imposed a nomination threshold based on legislative seats, restricted the legal capacity of non-parliamentary parties and negated the utility of valid votes as the organization's intangible assets. This normative legal research aims to analyze the implications of restoring the civil rights of political parties following the Constitutional Court Decision No. 60/PUU-XXII/2024, while expanding the analysis through a comparative approach with Pakistan's legal framework under the Political Parties Order (PPO) 2002. The results indicate that the Constitutional Court Decision No. 60/PUU-XXII/2024 serves as a restorative instrument that shifts the threshold basis back to valid votes to uphold the equality of legal entities. Based on the comparative synthesis, three typologies of regulatory models are identified: the Performance-Based Restriction Model (Indonesia pre-Decision 60/2024), the Compliance-Based Governance Model (Pakistan), and the Legitimacy-Based Proportionality Model (Indonesia post-Decision 60/2024). Through this comparison, Pakistan's experience demonstrates that the state can enforce internal party accountability without eliminating its fundamental civil right to nominate candidates, a governance direction that is now aligned with Indonesia's post-decision legal landscape.

Kata kunci:
Badan Hukum Privat, Mahkamah Konstitusi, Partai Politik, Pembatasan Kinerja, Perbandingan Pakistan.

Abstrak

Partai politik dalam sistem hukum Indonesia tidak hanya bertindak sebagai entitas politik, melainkan juga sebagai badan hukum privat (rechtspersoon) yang memiliki hak keperdataan mutlak. Namun, Pasal 40 UU No. 10 Tahun 2016 tentang Pilkada yang menerapkan ambang batas pencalonan berbasis perolehan kursi DPRD telah membatasi kapasitas hukum (legal capacity) partai

Corresponding Author:
Tia Rahadatul 'Aisyi, Email : 24111764015@mhs.unesa.ac.id

DOI:
https://doi.org/10.24843/KP.2026.v48.i02.p02

non-parlemen dan menegasi utilitas suara sah sebagai aset immaterial organisasi. Penelitian hukum normatif ini bertujuan menganalisis implikasi pemulihan hak keperdataan parpol pasca-Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024, sekaligus memperluas analisis menggunakan pendekatan perbandingan (comparative approach) dengan kerangka hukum Pakistan melalui Political Parties Order (PPO) 2002. Hasil penelitian menunjukkan bahwa Putusan MK No. 60/PUU-XXII/2024 berfungsi sebagai instrumen restoratif yang mengembalikan basis ambang batas ke perolehan suara sah demi menegakkan kesetaraan subjek hukum. Berdasarkan sintesis komparatif, ditemukan tiga tipologi model regulasi: Model Pembatasan Berbasis Kinerja (Indonesia pra-Putusan 60/2024), Model Tata Kelola Berbasis Kepatuhan (Pakistan), dan Model Proporsionalitas Berbasis Legitimasi (Indonesia pasca-Putusan 60/2024). Melalui perbandingan ini, pengalaman Pakistan membuktikan bahwa negara dapat menegakkan akuntabilitas internal partai tanpa harus mengeliminasi hak keperdataan fundamentalnya untuk mencalonkan kandidat, sebuah arah tata kelola yang kini selaras dengan lanskap hukum Indonesia pasca-putusan MK.
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1. Introduction

Political parties have long been studied from a constitutional law perspective as pillars of the democratic system that serve to channel the aspirations of the people and fill public offices through the mechanism of general elections. However, there is a legal dimension that has not yet been studied in depth, namely the status of political parties as private legal entities (rechtspersoon) that possess rights, obligations, and the capacity to act independently within the legal system. Law No. 2 of 2008 on Political Parties, as amended by Law No. 2 of 2011, explicitly grants legal entity status to political parties upon receiving state approval. This legally establishes political parties as distinct legal subjects, separate from their members and officials.[1] With this legal entity status, political parties should receive legal protection commensurate with their capacity to act, including the right to nominate pairs of candidates for regional head in regional head elections (Pilkada). This right to nominate candidates is not merely a political privilege granted by the state, but rather an organizational right inherent to the existence of political parties as legal entities. The theory of legal entities put forward by Friedrich Carl von Savigny asserts that legal recognition of an artificial entity must be accompanied by protection of its ability to exercise rights and fulfill obligations independently.[2] Savigny developed this theory within the framework of Roman law and nineteenth-century Pandektenwissenschaft; its

[1] Law No. 2 of 2008 on Political Parties, as amended by Law No. 2 of 2011, art. 1(1); see also Fahri Bachmid and Diana Rachmitasari, "The Supreme Court's Authority: Judicial Review of Statutes and By-Laws of Political Parties against Laws," *LAW REFORM* 18, no. 2 (2022), https://doi.org/10.14710/lr.v18i2.46275 (on the related question of judicial review of party statutes).

[2] Syahla Ailani Pramana, "Teori Filsafat Hukum Friedrich Karl Von Savigny," Praxis: Jurnal Filsafat Terapan 1, no. 1 (2022), https://journal.forikami.com/index.php/praxis/article/view/575.

relevance to Indonesia is nonetheless direct, since Indonesia's civil law system, inherited from the Dutch Burgerlijk Wetboek, adopted the same continental conception of the rechtspersoon as an artificial legal subject, making Savigny's framework a doctrinally appropriate foundation for analyzing Indonesian legal entities rather than a merely analogical one. The legal issue that arises is that Article 40 of Law No. 10 of 2016 on Regional Head Elections sets a nomination threshold based on the number of seats held in the Regional People's Representative Council (DPRD).[34] This system results in political parties that do not hold seats in the DPRD losing the right to independently nominate candidates for regional head, even though they have still secured the legitimacy of public support through the number of valid votes received in general elections. From a civil law perspective, this situation raises at least three legal issues. First, it restricts the legal capacity of non-parliamentary political parties as legal entities. Second, it causes the loss of the legal utility of voters' valid votes as an intangible asset of political parties. Third, it creates an inequality of bargaining power that places small parties in a subordinate position relative to large parties holding seats in the Regional People's Representative Council (DPRD). This situation changed fundamentally after the Constitutional Court issued Decision No. 60/PUU-XXII/2024. The decision shifted the basis for calculating the threshold for regional head candidacy from the number of seats held in the Regional People's Representative Council (DPRD) to the number of valid votes cast in general elections.[5] This ruling not only holds constitutional significance but also carries important implications from a civil law perspective, namely as an instrument that restores the civil rights of political parties that had previously faced structural restrictions. Previous research on the nomination threshold for regional heads has generally been approached from the perspectives of constitutional law and election law, with a focus on the constitutionality of the system and the design of electoral democracy.[6] Studies that specifically place this issue within the framework of civil law and the protection of the rights of private legal entities remain very limited. This study seeks to fill this gap while expanding the analysis by incorporating a comparative perspective from Pakistan, which, through the Political Parties Order (PPO) 2002, presents a structurally different approach to regulating political parties as private legal entities. Based on this background, this study poses four research questions: (1) What is the legal status of political parties as private legal entities, and what are the implications for the protection of their civil rights?; (2) How does the nomination threshold system based on Regional People's Representative Council (DPRD) seats limit the legal capacity of political parties?; (3) How does Constitutional Court Decision No. 60/PUU-XXII/2024 function as a restorative instrument for the civil rights of political parties?; and (4) What comparative regulatory model can be derived

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3 Dewa Mantera, "Proses Demokrasi Melalui Pilkada Yang Berkualitas Menuju Pemimpin Bali," *Jurnal Bali Membangun Bali* 1, no. 2 (2018), https://doi.org/10.51172/jbmb.v1i2.25.

4 D Ramadhan, B Saebani, and Y Sutiana, "Tinjauan Siyasah Dusturiyah Kerhadap Putusan Mk Nomor 60/PUU-XXII/2024 Tentang Ambang Batas Pencalonan Kepala Daerah Pada Pilkada 2024," *Ranah Research : Journal of Multidisciplinary Research and Development* 8, no. 1 (2025), https://doi.org/10.38035/rrj.v8i1.1871.

5 S Fikri, "Analisis Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 Terhadap Hak Politik Dalam Perspektif Teori Kontrak Sosial," *Amsir Law Journal* 6, no. 1 (2024), https://doi.org/10.36746/alj.v6i1.589.

6 M Maulana, "Analisis Tantangan Konstitusional Dan Problematika Hukum Tata Negara Dalam Pelaksanaan Pilkada 2024," *Constitution Journal* 3, no. 2 (2024), https://doi.org/10.35719/constitution.v3i2.114.

from Pakistan's Political Parties Order (PPO) 2002, and what lessons does it offer for the protection of political parties' civil rights as private legal entities in Indonesia?

2. Research Methods

This study is a normative or doctrinal legal study that focuses on the analysis of legal texts, doctrines, and case law regarding the status of political parties as private legal entities. The approaches used in this study include the statutory approach, the conceptual approach, the case approach, and the comparative approach. Statutory Approach: Used to examine regulations related to political parties and general elections in Indonesia, such as Law No. 2 of 2011 on Political Parties and Law No. 10 of 2016 on Regional Head Elections, as well as Pakistan's legal instrument, the Political Parties Order (PPO) 2002 and its amendments. Conceptual Approach: Used to examine the concept of legal capacity of political parties as private legal entities (rechtspersoon) based on Friedrich Carl von Savigny's theory of legal entities. Case Approach: Applied to analyze the legal implications of Constitutional Court Decision No. 60/PUU-XXII/2024 regarding the restoration of civil rights for non-parliamentary political parties. Comparative Approach: Used specifically to compare the legal frameworks and protections of political parties' civil rights between the Indonesian and Pakistani legal systems, in order to identify similarities, differences, and the structural strengths of each regulatory framework in treating political parties as private legal entities. Pakistan was selected as the comparative jurisdiction rather than other democracies such as Germany, India, or South Korea. The Political Parties Order (PPO) 2002 conditions a party's right to nominate candidates solely on internal governance compliance rather than on prior electoral performance. This offers a structurally distinct model that isolates the civil law variable central to this study's analysis: whether nomination rights are treated as contingent on performance or on the party's own conduct as a legal entity. Direct access to Pakistani Supreme Court jurisprudence and Urdu-language academic commentary was limited; this analysis therefore relies primarily on the text of the PPO 2002 and English-language secondary scholarship, a methodological constraint acknowledged here. The legal materials used consist of primary sources (party registration books, laws, court decisions) and secondary sources (legal journals, textbooks, and scholarly articles). All collected legal materials were then qualitatively analyzed using a descriptive-analytical method to comprehensively address the research questions.

3. Result and Discussion

3.1 Political Parties as Private Legal Entities and the Protection of Their Civil Rights in a Democratic System

3.1.1 The Status of Political Parties as Private Legal Entities and the Consequences for Their Legal Capacity

From a civil law perspective, political parties are not merely understood as instruments of democracy that serve to channel public aspirations through the mechanism of general elections, but also as private legal entities (rechtspersoon) that possess rights, obligations,

and the capacity to act independently within the legal system.[7] This legal recognition is enshrined in Law No. 2 of 2008 on Political Parties, as amended by Law No. 2 of 2011, which grants legal entity status to political parties upon receiving state approval. With this recognition, political parties become legal entities with an existence separate and independent from the members and officials who form them, thereby enabling them to act in their own capacity to exercise rights and fulfill obligations.

In his theory of legal entities, Friedrich Carl von Savigny views a legal entity as an artificial person that receives recognition from the legal system to independently exercise certain rights and fulfill certain obligations, regardless of who its members or officials may be.[8] The legal consequence of this view is that the state's recognition of an organization as a legal entity cannot be interpreted as merely the granting of an administrative stamp. Such recognition must be accompanied by a guarantee that the legal entity in question enjoys proportional protection of its legal capacity and legal autonomy that is, the ability to act in its legal capacity and the freedom to determine its organizational direction independently.[9] Without guarantees regarding these two elements, the status of a legal entity will be merely formalistic and lose its substantive meaning within the legal system.

In the context of political parties, one of the most concrete manifestations of legal capacity as a legal entity is the right to nominate candidates for regional head in the regional head election (Pilkada) process. This right to nominate candidates is not merely a political privilege granted by the state through administrative channels, but rather an organizational right inherent to the existence of political parties as private legal entities. This right reflects one of the core purposes of a political party's existence, namely the functions of recruitment and political representation, which form part of the organization's raison d'être.[10] Thus, any restriction on the right to nominate candidates for regional head positions is, in substance, a restriction on the political party's capacity to act as a private legal entity and cannot be understood solely from a technical electoral perspective. However, the provision of Article 40 of Law No. 10 of 2016 on Regional Head Elections which sets a nomination threshold based on the number of seats held in the Regional People's Representative Council (DPRD) indicates a reductionist tendency in interpreting the legitimacy and legal capacity of political parties. [11] This system treats administrative representation in the form of parliamentary seats as the sole measure of a nomination's legality, while electoral legitimacy derived directly from the public through valid votes is not given proportional recognition. Consequently, political parties without seats in the Regional People's Representative Council (DPRD) lose the ability to independently propose candidate pairs, even though they continue to enjoy tangible

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7 M Mahmudi, "Partai Politik Sebagai Badan Hukum Dalam Sistem Kepartaian Di Indonesia," *Jurnal Hukum (Universitas Islam Malang)* 9, no. 1 (2020): 16–32, https://doi.org/10.33474/hukum.v9i1.5046.

8 Pramana, "Teori Filsafat Hukum Friedrich Karl Von Savigny."

9 Balázs Tőkey and Bernadette Somody, "The Concept of Legal Capacity in Private Law and Constitutional Law," *Studia Iuridica Lublinensia* 33, no. 1 (2024): 263–78, https://doi.org/10.17951/sil.2024.33.1.263-278.

10 J Prihatmoko, "Rekrutmen PDIP Dalam Pilkada 2020: Antara Strategi Pemenangan Dan Pelembagaan Partai Politik," *SPEKTRUM* 19, no. 2 (2022), https://doi.org/10.31942/spektrum.v19i2.6655.

11 Maulana, "Analisis Tantangan Konstitusional Dan Problematika Hukum Tata Negara Dalam Pelaksanaan Pilkada 2024."

public support from previous general elections. From a civil law perspective, this situation constitutes a restriction on legal capacity that is inconsistent with the principle of substantive protection for private legal entities.

3.1.2 Voters' Valid Votes as Intangible Assets of Political Parties as Legal Entities

The status of political parties as private legal entities is also closely linked to the recognition of voters' valid votes as a form of legitimacy that carries inherent legal value for the organization. From a civil law perspective, a legal entity not only possesses tangible assets (corporeal assets) but may also hold intangible assets (incorporeal assets) that hold legal value. [12][13] These intangible assets include reputation, brand, public trust, relationships with stakeholders, and in the context of political parties social legitimacy and public support, as reflected in the number of valid votes obtained in general elections.[14] The legal value of these intangible assets is recognized in various modern civil law systems as part of the assets owned by a legal entity and as providing tangible benefits for the organization's continuity and development.[15]

In the context of political parties, the valid votes obtained from general elections are a manifestation of public support that is directly tied to the party's existence as an organization. The relationship between the party and its voters is representative in nature: voters entrust their political aspirations to the party, and that trust is realized through the casting of votes. Therefore, valid votes cannot be understood merely as statistical figures from election results, but rather as an expression of legitimacy that carries legal consequences for the party's rights and capacity to act within a democratic system. The greater a party's share of valid votes, the stronger its position of legitimacy to carry out its organizational functions, including the right to nominate candidates for regional head positions.

Satjipto Rahardjo, in his theory of legal protection, asserts that law should not be understood merely as a set of formal, procedural rules, but also as an instrument that provides substantive protection for the rights and interests of legal subjects.[16][17] 17 Legal protection is preventive when the law prevents rights violations from occurring, and it is repressive when the law provides a resolution for violations that have already occurred. Referring to this framework, the regulation of nomination thresholds based on DPRD

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12 R Rahmat et al., "LEGAL CERTAINTY ON THE LEGALITY OF ESTABLISHMENT OF LIMITED COMPANY BASED ON FAIRNESS OF PANCASILA," *Russian Journal of Agricultural and Socio-Economic Sciences* 134, no. 2 (2023), https://doi.org/10.18551/rjoas.2023-02.02.

13 J Grykiel, "The Key Institutions Regulated in Book One (the General Part) of the Polish Civil Code," *Pravovedenie* 65, no. 1 (2021), https://doi.org/10.21638/spbu25.2021.102.

14 M Ahmed, S Lodhi, and Z Ahmad, "Political Brand Equity Model: The Integration of Political Brands in Voter Choice," *Journal of Political Marketing* 16, no. 2 (2017): 147–79, https://doi.org/10.1080/15377857.2015.1022629.

15 V Gisca, "Practical Aspects of Patrimony Functions," *Competitiveness and Innovation in the Knowledge Economy*, 2023, 27, https://doi.org/10.53486/cike2022.27.

16 Satjipto Rahardjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2000), 53–58; see also M. Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo: Riwayat, Urgensi, Dan Relevansi M." 1, no. 1 (2018): 159–85, https://doi.org/10.22437/ujh.1.1.159-185.

17 Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia (Yogyakarta: Genta Publishing, 2009), 1–20; see also Anisa Rizki Fadhila Afrohatul Laili, "TEORI HUKUM PROGRESIF (Prof. Dr. Satjipto Rahardjo, S.H.)" x, no. x (n.d.).

seats can be categorized as a failure of the preventive function of legal protection, because this system actually facilitates structural restrictions on the civil rights of political parties. Specifically, the mechanism of thresholds based on DPRD seats results in the valid votes obtained by political parties having legal value only if they are successfully converted into parliamentary seats.[1819] If this conversion is not achieved. This is highly likely, given that the seat allocation process is heavily influenced by the vote-counting method, the size of electoral districts, and the parliamentary threshold. As a result, the valid votes actually obtained by the party lose all their legal benefits in the context of regional head nominations.

A party that may have garnered the support of tens of thousands of voters is still unable to nominate candidates independently. From a civil law perspective, such a situation constitutes a form of deprivation of legal utility regarding the intangible assets held by a legal entity the valid votes that should serve as the legal capital for a political party which instead lose their legal effectiveness due to the administrative mechanisms of the electoral system.[20]

3.1.3 The Principle of Equality Before the Law and Disparities in Protection Among Political Legal Entities

The protection of political parties as private legal entities cannot be separated from the principle of equality before the law, which is one of the foundations of a modern rule-of-law state.[2122] From a civil law perspective, this principle of equality applies not only to individuals as natural persons but also fully to legal entities as artificial persons that have received official recognition from the state.[23] Every legal entity that has met the legal requirements established by law fundamentally has the right to carry out its organizational functions independently, without discriminatory treatment that is disproportionate and legally unjustifiable.

A.V. Dicey, in his conception of the rule of law, identifies equality before the law as one of the three main pillars of a state governed by the rule of law. Dicey asserts that every person and, in the context of modern legal development, every legal subject, including

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18 M Maftuh, "Parliamentary Threshold in Constitutional Election in 2019 (Philosophical Review of the Principles of People Sovereignty)," *JIL : Journal of Indonesian Law* 1, no. 2 (2020): 200–213, https://doi.org/10.18326/jil.v1i2.200-213.

19 A Supryadi et al., "Penafsiran Konstitusi Terhadap Putusan Nomor 116/PUU-XXI/2023 Tentang Ambang Batas Parlemen," *GANEC SWARA* 18, no. 1 (2024), https://doi.org/10.35327/gara.v18i1.800.

20 A Prayugo, "Optimalisasi Sistem Proporsional Terbuka Melalui Perubahan Parlemen Threshold," *Journal of Administration, Governance, and Political Issues* 2, no. 1 (2025), https://doi.org/10.47134/jagpi.v2i1.3409.

21 Graeme Orr, "Private Association and Public Brand: The Dualistic Conception of Political Parties in the Common Law World," *Critical Review of International Social and Political Philosophy* 17, no. 3 (2014): 332–49, https://doi.org/10.1080/13698230.2014.886384.

22 V Piddubna, "Features of the Legal Status of Political Parties as Legal Entities: Comparative-Legal Characteristics," *ScienceRise: Juridical Science*, no. 4(26) (2023), https://doi.org/10.15587/2523-4153.2023.294272.

23 S Jitmau, S Naim, and S MuhAkhdharisa, "Implementation of the Principle of Equality Before the Law in the Dynamics of Indonesian Law," *JUSTISI* 11, no. 2 (2025), https://doi.org/10.33506/js.v11i2.4088.

legal entities must be on an equal footing before the law, without any group enjoying special privileges or receiving different treatment that cannot be legally justified.[24] If this principle is applied in the context of protecting the rights of private legal entities, then every political party that has been recognized by the state as a legal entity should receive proportional protection regarding its capacity to act and its organizational rights, regardless of the number of parliamentary seats it holds.

Setting a nomination threshold based on the number of seats in the Regional People's Representative Council (DPRD) actually creates two classes of political legal entities with significantly different levels of legal protection. The first class consists of parties holding parliamentary seats that have full access to the right to nominate regional heads, either independently or through coalitions initiated from a position of strong bargaining power. The second class consists of non-parliamentary parties which, although they also have legal entity status and derive legitimacy from the public through valid votes, do not have independent access to the nomination mechanism. This differential treatment is not based on differences in formal legal status, but solely on the administrative outcome of seat allocation, which is not always proportional to the level of public support. From a civil law perspective, this situation constitutes a clear violation of the principle of equality of legal entities, which requires that every legal entity be treated equally in the exercise of its legal rights and capacities.[25]

The structural impact of this inequality is also evident in the formation of coalitions ahead of regional elections. Small parties are often forced to form coalitions not based on shared platforms, ideologies, or the interests of their constituents, but solely due to the administrative necessity of meeting the nomination threshold. From a private law perspective, this situation reflects a stark inequality of bargaining power among legal entities. Large parties hold a dominant bargaining position, while small parties are forced to accept coalition terms that often do not reflect the internal will of their organizations.[26] This erosion of legal autonomy constitutes a serious civil law issue, far exceeding a mere technical matter of electoral system design.

3.2 Thresholds for Regional Head Candidacy as a Form of Restriction on the Legal Capacity of Political Parties

3.2.1 Reduction of Legal Capacity through a Threshold Mechanism Based on Regional Legislative Council (DPRD) Seats

The regulation of nomination thresholds for regional heads based on a minimum requirement for DPRD seats, as stipulated in Article 40 of Law No. 10 of 2016, substantively imposes a restriction on the legal capacity of political parties as private legal

[24] N Prabu and B Rumiartha, "Correlation Theory of A.V. Dicey Perspective of the Rule of Law in Indonesia," *Focus Journal Law Review* 2, no. 1 (2022), https://doi.org/10.62795/fjl.v2i1.19.

[25] O Fonotova and L Belyaeva, "Bargaining Inequality: Ways to Overcome It in International Commercial Law and in Private International Law," *RUDN Journal of Law* 27, no. 4 (2023): 1043–64, https://doi.org/10.22363/2313-2337-2023-27-4-1043-1064.

[26] Piddubna, "Features of the Legal Status of Political Parties as Legal Entities: Comparative-Legal Characteristics."

entities.[27] From a civil law perspective, every legal entity that has received official recognition from the state should have an equal opportunity to carry out its organizational functions independently. This is not only a matter of procedural justice but also concerns the integrity of the legal entity recognition system itself: if the state recognizes an entity as a legal entity, that recognition must be accompanied by a guarantee of the entity's ability to pursue the purposes that justify its existence.

Seat-based threshold provisions place parties that do not hold seats in the Regional People's Representative Council (DPRD) in a state of legal incapacity to independently nominate candidate pairs, even though they have still secured the legitimacy of public support through valid votes in general elections.[2829] This situation is normatively at odds with the principle that legal entity status must be accompanied by proportional protection of its capacity to act. In modern legal entity theory, restrictions on a legal entity's ability to pursue its organizational objectives particularly when such restrictions are not based on proportional and measurable considerations can be categorized as a form of restriction on legal capacity that is not justifiable under civil law.[30]

This issue becomes even more problematic when examined in greater depth in terms of the mechanism for converting votes into seats in a proportional electoral system. The number of seats won in the Regional People's Representative Council (DPRD) does not always proportionally reflect the level of public support for a particular party. The seat allocation system is heavily influenced by the counting method used (such as the Webster, D'Hondt, or Sainte-Laguë methods), the size of the electoral districts, the parliamentary threshold, and the geographic distribution of voters.[31] Consequently, a party that receives a significant number of valid votes at both the national and regional levels may still lose all of its parliamentary representation. This occurs because those votes are spread across many electoral districts without reaching the minimum seat quota in any single district. This demonstrates that the Regional People's Representative Council (DPRD) seat system, as the basis for the nomination threshold, creates systemic structural injustice against certain parties.

From a civil law perspective, the reduction in legal capacity stemming from this seat-based threshold system gives rise to at least two legal consequences.[32] First, non-parliamentary political parties lose the ability to exercise their right to nominate candidates independently, even though they have met the formal requirements as valid

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[27] R Pakina, "Recruitment and Regeneration Political Party: The Influence on Election of Regional Heads," in *Proceedings of the International Conference on Law, Economics and Health (ICLEH 2020)*, 2020, https://doi.org/10.2991/aebmr.k.200513.105.

[28] W Rini, "Calon Tunggal Dalam Pemilihan Umum Kepala Daerah Dan Konsep Demokrasi (Analisis Terhadap Pemilihan Kepala Daerah Kabupaten Blitar Tahun 2015)," *Jurnal Cita Hukum* 4, no. 1 (2016): 95684, https://doi.org/10.15408/jch.v4i1.2578.

[29] Meirina Susanti, "Dinasti Politik Dalam Pilkada Di Indonesia," *Journal of Governance and Civil Society* 1, no. 2 (2018): 111–19, https://doi.org/10.31000/jgcs.v1i2.440.

[30] P Cherevko, "Evolution of Legal Capacity of a Legal Entity in Civil Law," *Analytical and Comparative Jurisprudence*, no. 6–1 (2025): 84, https://doi.org/10.24144/2788-6018.2025.06.1.84.

[31] K Schuster et al., "Seat Biases of Apportionment Methods for Proportional Representation," *Electoral Studies* 22, no. 4 (2003): 651–76, https://doi.org/10.1016/s0261-3794(02)00027-6.

[32] R Nugroho, "Reconstruction of the Mechanism of Nomination for President and Vice President in Elections in Indonesia," *Borobudur Law Review* 4, no. 1 (2022), https://doi.org/10.31603/burrev.6905.

legal entities. Second, the legal value of the electoral legitimacy that a party obtains through the people's votes becomes legally ineffective, because the legal system does not provide a mechanism that allows such legitimacy to be directly converted into the right to act in the nomination process. This dual impact is a clear manifestation of the legal system's failure to provide consistent protection of the legal capacity of all political party legal entities.

3.2.2 Elimination of the Legal Utility of Valid Votes as a Civil Law Problem

The application of a nomination threshold based on DPRD seats also gives rise to a specific civil law problem in the form of the loss of the legal utility of valid votes obtained by political parties from voters in general elections. From a civil law perspective, valid votes do not merely have a political dimension but also carry legal value as a form of legitimacy inherent in the legal entity of a political party. The votes cast by voters for a party are an expression of trust and support that form a representative relationship between constituents and the party that represents them.

Within the framework of modern civil law, these valid votes can be understood as intangible assets owned by political parties as legal entities. Intangible assets in the context of private legal entities encompass various forms of value that lack a physical form but carry tangible legal consequences, such as corporate reputation, brand value, customer relationships, and in the case of political parties social legitimacy and the trust of constituents.[33] Therefore, electoral legitimacy obtained through elections should confer legal consequences proportional to the party's rights and capacity to act within a democratic system, including in the process of nominating regional heads.

However, the seat-based electoral threshold system creates a mechanism that actually eliminates the legal benefits of these intangible assets. Valid votes that successfully exceed the electoral threshold but fail to be converted into seats in the Regional People's Representative Council (DPRD) lose all their practical value in the context of regional head nominations. A party that secures millions of votes in a province but fails to win a single seat in the regency or city DPRD is still treated the same, in terms of its nomination rights, as a party that did not participate in the election at all. This disproportionate equal treatment indicates that the legal system has reduced the people's votes to mere statistical figures without adequate legal consequences for the legal entities that obtained them.

The practical implications of this erosion of the legal utility of valid votes are acutely felt by small parties that actually possess a mass base and genuine support from the public. These parties are forced to position themselves as entities that must seek protection or join a coalition led by a major party not out of genuine political will, but solely because the legal mechanisms fail to recognize the legitimacy they possess in a proportionate manner. From a civil law perspective, this situation represents a failure of the legal system to protect the value of the intangible assets held by a legal entity, which ultimately harms both the legal entity itself and its constituents.

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[33] N Skoropysova, "The Concept and Main Characteristics of the Corporate Reputation of Legal Entities in Ukraine," *Entrepreneurship, Economy and Law*, no. 5(2) (2021): 34–38, https://doi.org/10.37634/efp.2021.5(2).7.

3.2.3 *Inequality of Bargaining Power and the Erosion of Legal Autonomy in Regional Election Coalitions*

The most tangible impact of the seat-based threshold system for the Regional People's Representative Council (DPRD) in the context of civil law is the creation of unequal legal relationships among political parties as legal entities. This inequality specifically manifests as a striking imbalance of bargaining power in the process of forming regional election coalitions. From a private law perspective, bargaining power is a crucial element that determines the equality of legal relations between parties in a contract or agreement.[34] If there is an extreme disparity in bargaining power between the parties, the resulting contract or agreement cannot be considered to reflect the free and equal will of each party.

The seat-based threshold system for regional legislative councils (DPRD) creates a stark disparity in bargaining power between large parties holding seats and small, non-parliamentary parties. Parties that control seats in the DPRD have full authority to determine with whom they form coalitions, which candidates to field, and what conditions must be met by smaller coalition partners. Conversely, small parties have no alternative but to accept the terms dictated by the major parties, since the only way to participate in regional elections is through a coalition with a party that holds seats. This kind of structural dependence is a clear reflection of an unbalanced legal relationship.

The erosion of small parties' legal autonomy in this context is systemic and not the result of free choice. Legal autonomy, as a component of the legal capacity of private legal entities, encompasses the freedom to determine strategies, direction, and organizational actions in accordance with the organization's will and objectives.[35] In a situation where small parties lack independent access to the nomination process, their organizational freedom is forcibly curtailed: strategic decisions ranging from the selection of candidates to be fielded to the policy platform to be championed are no longer based entirely on the organization's internal considerations but must be negotiated from a position of subordination to the will of the large coalition partner party.

From the perspective of modern civil law, the concentration of access to a right or legal mechanism in the hands of a specific group of legal entities which leaves other legal entities with no choice but to submit to the will of the dominant group can be analogized to monopolistic practices under competition law.[36][37] Although this analogy is conceptual and does not necessarily imply the direct application of competition law, its framework is relevant for illustrating the structural distortions created by the seat-based threshold system within the Regional People's Representative Council (DPRD) regarding the legal relationships among political legal entities. The impact is detrimental not only to small

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[34] Thomas Fujiwara and Carlos Sanz, "Norms in Bargaining: Evidence from Government Formation in Spain," *NBER Working Paper Series*, 2017.

[35] Ramadhan, Saebani, and Sutiana, "Tinjauan Siyasah Dusturiyah Kerhadap Putusan Mk Nomor 60/PUU-XXII/2024 Tentang Ambang Batas Pencalonan Kepala Daerah Pada Pilkada 2024."

[36] N Kartiko and S Soegiono, "Analysis of the Impact of Monopoly Practices in the Entertainment Sector," *Indonesian Journal of Applied and Industrial Sciences (ESA)* 3, no. 2 (2024), https://doi.org/10.55927/esa.v3i2.8405.

[37] Moritz Renner, "Private Power," in *New Private Law Theory: A Pluralist Approach*, 2021, 243–60, https://doi.org/10.1017/9781108760089.015.

parties but also to the electorate, whose political choices become increasingly limited and whose local elections become less competitive.

3.3 *Restoration of Political Parties' Civil Rights through Constitutional Court Decision No. 60/PUU-XXII/2024*

3.3.1 *The Ratio Decidendi of Constitutional Court Decision No. 60/2024 from the Perspective of the Protection of Private Legal Entities*

Constitutional Court Decision No. 60/PUU-XXII/2024 is a legal milestone that fundamentally changes the threshold system for regional head candidacy from being based on the number of seats won in the Regional People's Representative Council (DPRD) to being based on the number of valid votes cast in general elections. In its ratio decidendi, the Constitutional Court affirmed that the threshold system based on DPRD seats had caused injustice and inequality that could not be constitutionally justified. This system prevented parties that had obtained legitimacy from the public from utilizing that legitimacy proportionally in the regional head nomination process.[38] While the Court's ratio decidendi is framed in constitutional terms, this study's contribution lies in reading that reasoning through a civil law lens, namely as recognition that a legal entity's electoral legitimacy carries proprietary legal value, a dimension the constitutional analysis itself does not directly address.

From a civil law perspective, the ratio decidendi of Constitutional Court Decision No. 60/2024 contains a significant dimension of protection for private legal entities.[39] The Court implicitly acknowledges that the valid votes obtained by political parties from voters possess legal value that must be protected proportionally, and that the legal system cannot allow that value to lose all its legal benefits merely due to an administrative seat-conversion mechanism that is not always proportional.[40] This recognition is in line with the principle of substantive protection of the rights and interests of private legal entities as articulated by Satjipto Rahardjo, namely that the law must provide real protection, not merely a formality.[41][42]

The change in the threshold basis resulting from Constitutional Court Decision No. 60/2024 is, in essence, a legal correction to the restrictions on legal capacity that non-parliamentary political parties have long faced.[43] By shifting the benchmark from seats in the Regional People's Representative Council (DPRD) to the number of valid votes

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[38] H Sihaloho, "Analisis Terhadap Putusan Mahkamah Konstitusi Republik Indonesia Nomor 60/PUU-XXII/2024 Tentang Ambang Batas Pencalonan Kepala Daerah Di Pilkada Tahun 2024 Menimbulkan Ketidakpastian Hukum Untuk Pilkada Berikutnya," *VYAVAHARA DUTA* 20, no. 1 (2025), https://doi.org/10.25078/vyavaharaduta.v20i1.4629.

[39] Sihaloho.

[40] M Flassy, U Idris, and M 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 (2025): 732, https://doi.org/10.22373/petita.v10i1.732.

[41] Pramana, "Teori Filsafat Hukum Friedrich Karl Von Savigny."

[42] Afrohatul Laili, "TEORI HUKUM PROGRESIF (Prof. Dr. Satjipto Rahardjo, S.H.)."

[43] M Soleh, "Aktualisasi Prinsip Negara Hukum Pasca Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024," *Konsensus : Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 2, no. 2 (2025), https://doi.org/10.62383/konsensus.v2i2.669.

received, the Constitutional Court has redefined the normative relationship between electoral legitimacy and the right to nominate candidates. The greater the public support a party receives through valid votes, the greater that party's legal capacity to participate in the nomination process for regional heads.[44] This normative construction is far more consistent with the principle of civil law that recognizes that the assets of a legal entity's legitimacy must provide proportional legal benefits to that entity.

It is important to note that Constitutional Court Decision No. 60/2024 does not eliminate the nomination threshold requirement entirely, but rather changes the basis for its calculation. This indicates that the Constitutional Court recognizes the need for a minimum standard to ensure that parties nominating candidates for regional head positions have an adequate level of public support. What has been corrected is the mechanism for measuring that support: from an indirect indicator parliamentary seats to a direct indicator valid voter votes. From a civil law perspective, this change is an appropriate step because it uses a more direct and proportional measure in assessing the legitimacy of political parties as legal entities to exercise their right to nominate candidates.

3.3.2 Restoration of Legal Capacity and the Legal Value of Valid Votes as Assets of Legal Entities

The most direct restorative dimension of Constitutional Court Decision No. 60/2024 from a civil law perspective is the restoration of the legal capacity of non-parliamentary political parties to utilize their electoral legitimacy in the nomination process for regional heads.[45][46] Prior to this decision, parties without seats in the Regional People's Representative Council (DPRD) were in a state of de facto legal incapacity. Although their candidacy was recognized as that of a valid legal entity, they lacked the actual ability to carry out one of their primary organizational functions. This paradoxical condition represented an internal inconsistency within the legal system, which recognized their legal entity status but failed to fully protect their capacity to act.

Through Constitutional Court Decision No. 60/2024, this legal incapacity has been substantively restored. Political parties that secure a number of valid votes meeting the new threshold now possess actual not merely formal legal capacity to nominate candidates for regional head positions. This restoration is not merely administrative in nature but touches upon the substantive aspect of protecting the legal capacity of legal entities: these parties can now effectively utilize their intangible asset electoral legitimacy

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[44] M Nisa, A Widya, and A Kartika, "Eksistensi Putusan Mahkamah Konstitusi Dalam Rancangan Undang-Undang Pemilihan Kepala Daerah," *Jurnal Hukum Samudra Keadilan* 20, no. 1 (2025): 11341, https://doi.org/10.33059/jhsk.v20i1.11341.

[45] Ramadhan, Saebani, and Sutiana, "Tinjauan Siyasah Dusturiyah Kerhadap Putusan Mk Nomor 60/PUU-XXII/2024 Tentang Ambang Batas Pencalonan Kepala Daerah Pada Pilkada 2024."

[46] D Yudhistira and B Nurdin, "Dynamics of Legal Politics after Constitutional Court Decision Number 60/PUU-XXII/2024 Regarding the Party Wholesale System in the 2024 Regional Head Elections," *Indonesian Journal of Multidisciplinary Science* 4, no. 3 (2024): 1039, https://doi.org/10.55324/ijoms.v4i3.1039.

to carry out their political representation functions, which constitute the very raison d'être of their existence as legal entities.[47][48]

Furthermore, this ruling also restores the legal value of voters' valid votes as an intangible asset of political parties as legal entities. The votes cast by millions of voters for non-parliamentary parties which previously had no legal consequences in the context of regional head candidacies now regain their legal value and benefits. These votes are no longer merely numbers recorded in the General Elections Commission's (KPU) tally without any meaningful legal effect; rather, they have become a tangible legal asset enabling parties to participate in regional head elections. The restoration of the legal value of these valid votes is a crucial step toward building a legal system that consistently and proportionally recognizes and protects the intangible assets of private legal entities.

This restoration also carries a significant dimension of public trust. If voters come to realize that the votes they cast for a political party have no meaningful legal consequences outside of legislative elections, their trust in the values of democracy and the legal system may gradually erode. Constitutional Court Decision No. 60/2024 restores the legal relevance of every vote cast, thereby strengthening the representative relationship between political parties as legal entities and their constituents as the source of legitimacy a relationship that lies at the core of the existence of political parties in a democratic system.

3.3.3 Restoration of Legal Autonomy and Reconstruction of the Equality of Legal Entities Among Political Parties

In addition to restoring legal capacity, Constitutional Court Decision No. 60/2024 also carries restorative implications for the legal autonomy of political parties, particularly for small parties that have long been trapped in structural dependence on large parties in the process of nominating regional heads.[49] Legal autonomy, as an element of the legal capacity of private legal entities, encompasses the freedom to determine organizational strategies, select coalition partners based on substantive considerations, and make important decisions based on the organization's internal will without coercive external pressure.[50]

With the shift in the threshold basis to the number of valid votes, parties with sufficient electoral support now have broader options in determining their nomination strategies. They can choose to field candidates independently if they meet the threshold, or form coalitions based on substantive considerations of shared vision, policy platforms, and

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[47] E Rashkova and I Van Biezen, "The Legal Regulation of Political Parties: Contesting or Promoting Legitimacy?," *International Political Science Review* 35 (2014): 265–74, https://doi.org/10.1177/0192512114533981.

[48] M Farisi et al., "ICCPR and the Future of Political Rights: A Critical Analysis of Existing International Legal Norms," *Uti Possidetis: Journal of International Law* 6, no. 2 (2025): 43388, https://doi.org/10.22437/up.v6i2.43388.

[49] I Nahak, "Implikasi Putusan MK No.60/PUU-XXII/2024 Terhadap Dinamika Partai Politik Dan Calon Perseorangan," *Doktrin: Jurnal Dunia Ilmu Hukum Dan Politik* 3, no. 3 (2025): 5321, https://doi.org/10.59581/doktrin.v3i3.5321.

[50] B Verschuere and J De Corte, "The Impact of Public Resource Dependence on the Autonomy of NPOs in Their Strategic Decision Making," *Nonprofit and Voluntary Sector Quarterly* 43 (2014): 293–313, https://doi.org/10.1177/0899764012462072.

constituent interests rather than solely out of an administrative need to meet the requirements for securing seats. This shift in the motivation behind coalition-building from a compulsory administrative necessity to a substantive political one is a clear indicator of the restoration of political parties' legal autonomy as private legal entities. In a broader sense, Constitutional Court Decision No. 60/2024 also reconstructs the principle of equality of legal entities within the regional head nomination system.[51][52] Prior to this decision, there was a stark disparity between the legal entities of major and minor political parties regarding access to nomination rights. This disparity was not based on differences in formal legal status since both types of parties hold the status of valid legal entities but rather on the administrative outcome of seat allocation, which was not always proportional to the level of public support. Constitutional Court Decision No. 60/2024 corrects this imbalance by shifting the criteria to valid votes, which serve as a more direct and proportional indicator of public support.

The restoration of equality among legal entities achieved through this ruling does not mean that all differences between large and small parties have been eliminated. Differences in the thresholds that must be met remain and are proportional to the size and population of the relevant region. Most importantly, however, the basis for differentiation now employs fairer and more proportional criteria: electoral legitimacy derived directly from the people's votes, rather than administrative representation in the form of seats influenced by various technical factors in the vote count. Thus, every political party whether large or small now has a more equitable and proportional opportunity to leverage its public support as a legal basis in the process of nominating regional heads.

From an overall civil law perspective, Constitutional Court Decision No. 60/2024 can be viewed as a three-dimensional restorative instrument. First, it restores legal capacity, enabling non-parliamentary parties to actually exercise their right to nominate candidates. Second, it restores the legal value of valid votes as an intangible asset that provides tangible legal benefits to legal entities. Third, it restores the balance of legal relations among political legal entities through the reestablishment of the principle of equality of legal entities.[53] These three dimensions of restoration are interrelated and together form a more coherent and consistent legal protection framework for political parties as private legal entities within Indonesia's democratic system. Unlike the constitutional law perspective, which typically frames this ruling within the context of constitutional corrections to the electoral system's design, this study demonstrates that the ruling also carries deeper significance from a civil law perspective: an affirmation that formal recognition of a legal entity must always be accompanied by substantive protection of the civil capacities and rights inherent in its existence.

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[51] S Alimsyah and R Syam, "Constitutional Court Decision No.60/Puu-XXII/2024 Protects the Constitutional Rights of Citizens and Political Parties in Simultaneous Regional Elections in the Regions," *LITERATUS* 6, no. 2 (2024), https://doi.org/10.37010/lit.v6i2.1712.

[52] A Fikri and F Syam, "Legal Politics Of Regional Head Elections With One Candidate Pair Based On The Constitutional Court Ruling No. 60/PUU-XXII/2024," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 5, no. 4 (2026): 2098, https://doi.org/10.55227/ijhess.v5i4.2098.

[53] Soleh, "Aktualisasi Prinsip Negara Hukum Pasca Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024."

3.4 Comparative Analysis: Civil Rights of Political Parties as Private Legal Entities in Pakistan

Under Pakistan's Political Parties Order (PPO) 2002, the regulatory framework shifts the burden of eligibility from performance-based metrics (e.g., electoral percentages) to strict administrative compliance. While this model theoretically democratizes party participation by allowing any compliant legal entity to contest seats, a contextual analysis reveals significant operational pathologies. Unlike Indonesia's relatively stable democratic consolidation, Pakistan's constitutional journey has been disrupted by recurring military interventions and the weaponization of accountability mechanisms.

Scholars note that the Election Commission of Pakistan (ECP) has frequently been critiqued for functioning as an instrument of executive exclusion, using minute compliance failures to dissolve or restrict unfavorable political factions. It is a necessary methodological caveat of this study to acknowledge that the access to primary localized Pakistani judicial records was constrained; hence, the functional assessment relies on Pakistani academic scholarship and reported constitutional cases. This dynamic demonstrates that while a compliance-based model prevents the direct expropriation of suara sah seen in Indonesia, it introduces the risk of administrative authoritarianism if institutional checks are absent.

3.4.1 Autonomy of Internal Rules: Limited Autonomy with Substantive State Oversight

In Pakistan, political parties have limited autonomy over their internal rules and constitutions. The PPO 2002 requires every party to register its constitution and articles of association with the ECP. The ECP has the authority to reject registration if a party's constitution is deemed inconsistent with national law, including the principles of Islam, national integrity, or requirements for internal democratic governance. Although the state does not directly dictate the substance of the AD/ART, the ECP's oversight authority is substantive, not merely procedural. Applying the Von Savigny framework, this constitutes a deviation from the principle that legal recognition must protect organizational autonomy. In Pakistan, the state's recognition of a party as a legal entity is explicitly contingent upon the state's acceptance of the party's constitution. This is more restrictive than the Indonesian model in terms of internal autonomy; however, this condition is applied at the registration stage rather than as an ongoing mechanism that limits the exercise of already recognized rights. The key difference is this: once registered, Pakistani parties retain their internal autonomy without further intervention. Meanwhile, Indonesia's long-standing threshold continuously restricts the exercise of parties' recognized rights based on post-registration election results. In a compliance-based model like the PPO 2002, the ownership of organizational assets is fully recognized, yet it is tethered to strict public accountability. Political parties as legal entities retain the right to manage their property, but they must submit audited financial statements detailing their sources of funds. In the context of private law, this indicates that the rechtspersoon holds a conditional property right, where the state enforces transparency as a prerequisite for maintaining legal capacity. This prevents the distortion of party assets while preserving their private legal personality.

3.4.2 Property Rights: Recognized but Subject to Transparency Obligations

Pakistani political parties are legally recognized as entities that can own assets in the name of their organization, including real property such as land and buildings. This recognition is consistent with the general principle of civil law that legal entities possess both corporeal and incorporeal assets. However, the PPO 2002 and subsequent rulings by the Supreme Court of Pakistan establish strict transparency obligations: parties are required to declare all assets and sources of funding to the ECP annually. Failure to meet this obligation may result in the freezing of the party's assets or its dissolution. From a civil law perspective, the legal capacity to own assets in Pakistan is not in dispute it is firmly established. What is conditional is the continued existence of that capacity, which depends on ongoing regulatory compliance. Unlike the situation in Indonesia, where intangible assets (valid votes) are rendered legally powerless by the nomination threshold, Pakistan's framework does not eliminate the legal utility of party assets but rather conditions their exercise on transparency requirements. This approach is more consistent with Satjipto Rahardjo's model of substantive legal protection: the state protects rights while implementing accountability mechanisms.The fundamental shift in the compliance model is that the right to nominate candidates is not rationed by past electoral success. A newly established party has the same legal capacity to field candidates as an established one, provided it fulfills the administrative requirements laid down by the regulator. This stands in stark contrast to the pre-2024 Indonesian model, which penalized parties based on performance metrics. That model effectively created a monopoly of candidacy for dominant political coalitions and diminished the utility of votes held by minor entities.

3.4.3 Freedom of Candidacy: Compliance-Based, Not Performance-Based

This is the dimension most directly relevant to comparative analysis. Pakistan does not apply a parliamentary seat-based threshold for candidacy in either regional or national elections. Any party registered with the ECP is entitled to field candidates for elections to the National Assembly and provincial assemblies without any minimum prior seat requirement. The right to field candidates derives directly from registration status, not from past electoral performance. However, a party's registered status and thus its right to field candidates depends on the ongoing fulfillment of administrative conditions: conducting internal (intra-party) elections, submitting periodic financial reports, and maintaining organizational activity. If these conditions are not met, the ECP may revoke the party's registered status, which automatically eliminates its right to field candidates. This mechanism can be categorized as compliance-based rather than performance-based: the right to field candidates is conditioned on how the party manages itself, not on its performance in previous elections. From the perspective of Von Savigny's theory of legal persons, Pakistan's compliance-based model is more consistent with the principle that legal recognition must protect an entity's ability to pursue its organizational goals. Structural factors beyond the party's control such as seat-allocation mechanisms, the size of electoral districts, and vote-counting methods do not determine its right to field candidates. A party's legal capacity to act in its primary organizational functions remains intact as long as it fulfills its internal governance obligations.

3.4.4 Comparative Synthesis: Two Models for Regulating the Civil Rights of Political Party Legal Entities

A comparison between the Indonesian framework prior to Constitutional Court Decision No. 60/2024, the post-decision framework in Indonesia, and the Pakistani framework yields a typology of three models for regulating the civil rights of political parties as legal entities. A comprehensive mapping of the characteristics and fundamental differences among these three models is presented in Table 1 below:

Table 1. Typology of Regulatory Models for the Civil Rights of Political Parties as Legal Entities

Dimensions Comparison	**Performance-Based Restriction Model (Indonesia Before Constitutional Court Decision No. 60/2024)**	**Compliance-Based Governance Model (Pakistan—PPO 2002)**	**Legitimacy-Based Proportionality Model (Indonesia Post-Constitutional Court Decision No. 60/2024)**
Primary Criteria Candidacy	Determined by performance in previous elections (number of seats won in parliament).	Determined by compliance with internal governance (internal elections, financial reports).	Determined by the number of valid votes cast as a direct indicator of legitimacy.
Impact on I Capacity	Creates systemic legal incapacity for non-parliamentary parties.	Maintains the legal capacity of all registered parties to act or field candidates.	Restores a party's legal capacity based on the proportionality of votes.
Status of Vo Valid Votes	Eliminating the legal utility of valid votes as an intangible asset of political parties.	Not eliminating the utility of assets, but rather conditioning it on transparency.	Restoring and valuing the legal significance of valid votes as an intangible asset of political parties.
Balance Bargaining Pow	Creates a sharp inequality of bargaining power among political parties.	Maintaining equality of legal entities among registered political parties.	Restoring equality of legal entities in a proportional manner.
Theoretical Consistency	Contradicts the principles of Von Savigny (legal autonomy) and A.V. Dicey.	Consistent with the substantive protection of legal entities' rights (Satjipto Rahardjo & Von Savigny).	Takes a middle ground; consistent with the principles of substantive protection and popular sovereignty.

Source: analysed by authors (2026)

An in-depth explanation of the characteristics of each model within this regulatory spectrum is as follows:

1. Performance-Based Restriction Model (Indonesia prior to Decision 60/2024): The right of political parties as legal entities to field candidates for core civil rights is contingent upon their performance in previous elections, as measured by the number of parliamentary seats won. This creates legal incapacity for non-parliamentary parties, eliminates the legal utility of valid votes as an intangible asset, and gives rise to systemic inequality of bargaining power. Structurally, this is inconsistent with Von Savigny's principle of legal entity protection and Dicey's principle of equality before the law.
2. Compliance-Based Governance Model (Pakistan): The right to field candidates is contingent on internal governance practices regarding party registration, internal elections, and financial transparency not on electoral performance. This model preserves the legal capacity of all registered political parties to field candidates, regardless of the results of previous elections. It is more consistent with the substantive protection of legal entities' rights because it conditions parties on factors within their own control.
3. Legitimacy-Based Proportionality Model (Indonesia post-Ruling 60/2024): The right to nominate candidates is contingent upon the number of valid votes received, which serves as a direct and proportional indicator of public legitimacy. This model restores legal capacity, reaffirms the legal value of valid votes as an intangible asset, and reconstructs the equality of legal entities. This model occupies a middle ground between the purely compliance-based and performance-based models.

This typology of the three models demonstrates that the protection of the civil rights of political parties as legal entities is not a binary choice between full state control and full private autonomy. It is rather a spectrum of regulatory approaches with different implications for legal capacity, legal autonomy, and the equality of legal entities. Pakistan's compliance-based model offers a valuable comparative reference: it demonstrates that the state can impose meaningful conditions on political parties as private legal entities to ensure democratic internal governance and financial accountability without infringing upon the fundamental civil right to nominate candidates. Post-Ruling 60/2024, Indonesia has moved in a direction more consistent with the substantive protection of legal entities and the comparative evidence from Pakistan.

4. Conclusion

This study concludes that political parties in Indonesia are, legally speaking, private legal entities (rechtspersoon) possessing independent legal capacity that is separate from that of their individual officials. As private legal entities, political parties are entitled to full protection from the state regarding their organizational civil rights in order to carry out their functions and achieve their founding objectives. However, Article 40 of Law No. 10 of 2016, which based the threshold requirement for regional head candidacy on the number of seats held in the Regional People's Representative Council (DPRD) prior to Constitutional Court Decision No. 60/PUU-XXII/2024, created a legal anomaly. This anomaly took the form of legal incapacity for non-parliamentary political parties. This electoral restriction not only eliminates the legal utility of valid votes as an intangible asset

of political parties but also creates an inequality of bargaining power that weakens the position of small parties within coalition dynamics. Constitutional Court Decision No. 60/PUU-XXII/2024 serves as a restorative legal instrument that has successfully restored the civil rights of political parties that had previously been eroded. By shifting the threshold for candidacy back from the number of parliamentary seats held to the proportional number of valid votes received, this decision reconstructs the principle of equality of legal entities. It also restores the economic and legal value of the people's votes as intangible assets of political parties. Through a comparative legal approach with Pakistan's Political Parties Order (PPO) 2002, this study successfully formulates a comparative synthesis in the form of a typology of three regulatory models. Unlike pre-ruling Indonesia, which applied a performance-based restriction model, Pakistan adopted a "Compliance-Based Governance Model." Under this model, the civil rights of political parties, including the right to field candidates, are consistently protected as long as the party complies with internal governance obligations, such as conducting internal party elections and ensuring financial transparency. These rights are not contingent on the number of electoral seats won. This comparative experience from Pakistan demonstrates universally that the state can still enforce accountability and oversight over political parties as private legal entities without having to restrict or eliminate their fundamental civil rights. Ultimately, the legal developments in Indonesia following Constitutional Court Decision No. 60/PUU-XXII/2024 toward a legitimacy-based proportionality model mark a new phase of governance that is increasingly aligned with the principle of substantive protection of the existence of political parties as legal entities.

Acknowledgments

The authors gratefully acknowledge the academic environment provided by their affiliated institution during the preparation of this article, the guidance received from instructors in constitutional and civil law who informed the analysis of Constitutional Court Decision No. 60/PUU-XXII/2024, and the contribution of the co-author responsible for the comparative regulatory data and analysis on Pakistan's Political Parties Order (PPO) 2002.

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