

Constitutional Regression through Jurisprudential Repetition in the Indonesian Constitutional Court's Recall Doctrine

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Abstract

This study examines the implications of Constitutional Court Decision No. 199/PUU-XXIII/2025, which affirms the constitutionality of the interim replacement (Pergantian Antarwaktu/PAW) of members of the House of Representatives (DPR) at the initiative of political parties. It focuses on whether the Court's interpretation of Article 22E paragraph (3) of UUD NRI 1945 is consistent with the principle of popular sovereignty and whether party-initiated recall remains constitutionally justified within an open-list proportional electoral system based on candidates' highest vote totals. This study employs a legal research methodology using statutory, conceptual, and case approaches, examining the UUD NRI 1945, Law Number 17 of 2014, Law Number 2 of

2011, Law Number 7 of 2017, and relevant Constitutional Court decisions. The study argues that Decision No. 199/PUU-XXIII/2025 reinforces party sovereignty by relying on and repeating the reasoning of Decision No. 38/PUU-VIII/2010 without adequately rethinking the constitutional implications of the contemporary electoral system. Such jurisprudential repetition shifts control over the representative mandate from voters to political parties, weakens vertical accountability to constituents, and undermines the legitimacy of individual votes. The decision therefore risks transforming Indonesian representative democracy from a people-centered model into a party-centered electoral model, in which popular sovereignty is formally preserved but substantively weakened.

KEYWORDS *Popular Sovereignty, Recall Mechanism, Political Parties; Constitutional Court, Jurisprudential Repetition, Vertical Accountability*

Introduction

The interim replacement (*Pergantian Antarwaktu*/PAW) of members of the House of Representatives (DPR) constitutes a constitutionally recognized mechanism for terminating parliamentary membership before the expiry of a representative's term. Article 22B of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) provides that members of the House of Representatives may be dismissed from office, with the requirements and procedures for such dismissal to be regulated by law. The constitutional provision therefore establishes the legitimacy of parliamentary dismissal at the constitutional level while leaving its specific grounds and procedures to statutory regulation. The central question is consequently not whether PAW may exist, but how the authority to initiate and determine the termination of an elected representative should be structured within a constitutional democracy founded on popular sovereignty.¹

Under the statutory framework, PAW is closely connected to the institutional position of political parties. Article 239 of Law Number 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional Houses of Representatives provides several grounds for the dismissal of DPR members, including dismissal

¹ Anggi Sihol Dameanti, Reza Mahendra, and Yori Viski Oktivan, "Tinjauan Kritis Pergantian Antar Waktu Dalam Dinamika Politik Indonesia: Perspektif Demokrasi," *Civil Officium: Journal of Empirical Studies on Social Science* 3, no. 1 (July 22, 2024): 16–21, doi:10.53754/civilofficium.v3i1.389.

proposed by a political party and dismissal following the termination of party membership. This relationship is reinforced by Article 16 of Law Number 2 of 2011 on Political Parties, which permits the dismissal of party members for violations of party statutes and bylaws (AD/ART) and provides that the dismissal of a party member who simultaneously serves in a representative institution may be followed by dismissal from that institution. Article 240 of Law Number 17 of 2014 further places the initiative for parliamentary dismissal in the hands of the political party. The resulting legal framework thus establishes an institutional relationship between party membership and the continuity of a parliamentary mandate.

This framework must, however, be considered alongside the structure of Indonesian electoral representation. Article 1 paragraph (2) of the UUD NRI 1945 establishes that sovereignty rests with the people and is exercised in accordance with the Constitution. In legislative elections, this principle is operationalized through the electoral process regulated by Article 22E of the UUD NRI 1945. Under Indonesia's open-list proportional representation system, elected DPR candidates are determined by the highest number of votes obtained by candidates within the seats allocated to participating political parties in an electoral district, as provided in Article 422 of Law Number 7 of 2017 on General Elections. The legal structure consequently creates a distinctive relationship between political parties, candidates, and voters: political parties participate in elections and nominate candidates, while individual candidates obtain electoral support through votes cast by citizens.² The post-election continuity of that mandate, however, remains subject to the statutory PAW mechanism initiated by political parties.

This relationship became the subject of Constitutional Court Decision No. 199/PUU-XXIII/2025. The petition challenged, among other matters, the constitutionality of party-initiated PAW under Article 239 paragraph (2) letter (d) of Law Number 17 of 2014. In rejecting the petition, the Constitutional Court relied principally on Article 22E paragraph (3) of the UUD NRI 1945, which provides that political parties are the participants in elections for

² Syaifullah Yophi Ardiyanto, "Tinjauan Terhadap Putusan Mahkamah Konstitusi Nomor 22-24/PUU-vi/2008 Mengenai Suara Terbanyak Dalam Rangka Perwujudan Kedaulatan Rakyat," *Jurnal Konstitusi* 2, no. 01 (2008); Khairul Fahmi, "Prinsip Kedaulatan Rakyat Dalam Penentuan Sistem Pemilihan Umum Anggota Legislatif," *Jurnal Konstitusi* 7, no. 3 (May 20, 2016): 119–60, doi:10.31078/jk735; Erla Sharfina Permata Noor, Ahmadi Hasan, and Masyithah Umar, "Demokrasi Di Indonesia Mewujudkan Kedaulatan Rakyat," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 1, no. 4 (December 15, 2023): 679–93, doi:10.62976/ijijel.v1i4.196.

members of the DPR and Regional Houses of Representatives. From the Court's perspective, political parties occupy a position within representative democracy because they serve as the institutional participants through which legislative candidates are presented to the electorate. On this basis, the Court regarded the authority of political parties to propose PAW as compatible with the electoral system and as a consequence of their constitutionally recognized role in legislative elections. The Court also considered the absence of a voter-initiated recall mechanism and the possibility of recall through a by-election in light of practical considerations, including the secrecy of the ballot and the administration of elections.

The decision therefore raises a tension concerning the relationship among popular sovereignty, political parties, and the parliamentary mandate. On the one hand, political parties have an expressly recognized role as participants in legislative elections and play important functions in organizing political representation. On the other, Article 1 paragraph (2) UUD NRI 1945 places the people as the holders of sovereignty, while the open-list proportional electoral system gives individual electoral support a direct role in determining which candidates obtain parliamentary seats. The question that follows is whether the party's role as an electoral participant necessarily entails authority over the continuation of a mandate subsequently obtained through individual votes. This may result from the termination of party membership or from internal party rules contained in AD/ART.

Existing scholarship has examined PAW primarily from the perspective of the relationship between political parties and individual legislators, the institutional authority of political parties to recall their members, and the implications of recall for representative democracy. Subhan, for example, examines recall as a contest between the rights of political parties and the political rights of their members.³ Farida discusses the PAW mechanism and its implications for the concept of popular representation⁴, while Muttaqien highlights the implications of party-initiated PAW for democracy⁵. More recent scholarship has questioned the adequacy of party-controlled recall and has

³ M. Hadi Subhan, "Recall: Antara Hak Partai Politik Dan Hak Berpolitik Anggota Parpol," *Jurnal Konstitusi* 3, no. 4 (2006).

⁴ Rida Farida, "Mekanisme Penggantian Antar Waktu (Paw) Anggota Dpr Dan Implikasinya Dalam Konsep Perwakilan Rakyat," *JURNAL CITA HUKUM* 1, no. 2 (December 2, 2013), doi:10.15408/jch.v1i2.2991.

⁵ Al, Muttaqien, "Implikasi Penggantian Antar Waktu (PAW) Anggota DPR/DPRD Oleh Partai Politik Terhadap Demokrasi," *Jurnal Sosial Humaniora Sigli* 3, no. 1 (June 15, 2020): 1–12, doi:10.47647/jsh.v3i1.231.

explored constituent recall as an alternative mechanism for strengthening the relationship between representatives and voters.⁶ Other studies have examined judicial decisions concerning PAW and the mechanisms through which parliamentary dismissal is implemented⁷. These studies establish an important foundation for understanding PAW as a problem of party authority, representative accountability, and democratic representation.

Nevertheless, the existing literature leaves an important doctrinal question insufficiently examined. Much of the scholarship addresses the legality, political consequences, or democratic implications of PAW, but does not sufficiently examine how the Constitutional Court constructs the constitutional relationship between Article 22E paragraph (3) UUD NRI 1945, which identifies political parties as electoral participants, and Article 1 paragraph (2) UUD NRI 1945, which establishes popular sovereignty as the foundational principle of the constitutional order. In particular, the implications of the Court's reliance on its earlier jurisprudence, including Decision No. 38/PUU-VIII/2010, have not been sufficiently examined in relation to the transformation of Indonesia's electoral system toward greater candidate-based electoral legitimacy. The present study therefore approaches PAW not merely as an institutional mechanism of party discipline, but as a question concerning the ownership, continuity, and accountability of the parliamentary mandate.

The novelty of this study lies in examining Decision No. 199/PUU-XXIII/2025 through the concept of jurisprudential repetition and its implications for constitutional reasoning. Rather than assuming that the Court's earlier position is automatically transferable to the contemporary electoral context, this study asks whether the continued reliance on prior jurisprudence adequately responds to the challenges of the open-list proportional system and the personalization of electoral mandates. The study consequently situates the decision within the broader tension between party-based representation and popular sovereignty and examines whether the Court's reasoning provides sufficient justification for maintaining party-initiated recall in the contemporary electoral system.

⁶ Muhammad Iswan, "Kewenangan Partai Politik Terhadap PAW Anggota DPR RI Hubungannya Dengan Sistem Proporsional Terbuka Dalam Penyelenggaraan Pemilu," *Klausula (Jurnal Hukum Tata Negara, Hukum Administrasi, Pidana Dan Perdata)* 2, no. 2 (November 8, 2023): 143, doi:10.32503/klausula.v2i2.3838.

⁷ Aan Marriansah, A Zarkasi, and Muhammad Amin, "Analisis Terhadap Putusan Mahkamah Agung Nomor 57 P/Hum/2019 Tentang Pergantian Antar Waktu Anggota Legislatif," *Limbago: Journal of Constitutional Law* 2, no. 2 (June 30, 2022): 216–31, doi:10.22437/limbago.v2i2.19130.

Against this background, this study addresses two principal legal questions. First, whether the Constitutional Court's interpretation of Article 22E paragraph (3) of the UUD NRI 1945 adequately reconciles the role of political parties with the principle of popular sovereignty under Article 1 paragraph (2). Second, whether party-initiated recall remains constitutionally justifiable within an electoral system in which the election of DPR members is determined by candidates' highest vote totals and therefore incorporates a direct relationship between individual candidates and voters.

To address these questions, this study employs a legal research methodology using statutory, conceptual, and case approaches. The statutory approach examines the UUD NRI 1945, Law Number 17 of 2014, Law Number 2 of 2011, and Law Number 7 of 2017 as the principal legal framework governing PAW and legislative representation. The conceptual approach is used to examine popular sovereignty, political representation, representative mandates, and accountability within constitutional democracy. The case approach focuses principally on Constitutional Court Decision No. 199/PUU-XXIII/2025 and its relationship with relevant prior jurisprudence, particularly Decision No. 38/PUU-VIII/2010. Through these approaches, the study evaluates the doctrinal coherence of the Court's reasoning and its implications for the constitutional relationship among voters, political parties, and elected representatives.

The Legal Regime of PAW in Indonesia: The Dominance of Party-Based Norms

A. The Construction of the PAW Mechanism

The construction of the recall or PAW mechanism for members of the DPR within Indonesia's positive law reveals a consistent pattern; recall is positioned as the exclusive prerogative of political parties, rather than as a right or an instrument of voter sovereignty.⁸ This pattern emerges from an integrated legal-formal design embodied in Law Number 17 of 2014, Law Number 2 of 2011, and Law Number 7 of 2017. These three legal regimes mutually reinforce one another and collectively form a legal architecture that places political parties as the primary holders of control over the continuity of the representative

⁸ Hufron Hufron et al., "The Power to Remove: A Comparative Inquiry Into Recall Mechanisms in Indonesia and The Philippines," *International Comparative Jurisprudence* 10, no. 2 (2022): 203–20, doi:10.13165/j.icj.2024.12.003.

mandate, while the people, as voters, are relegated to a marginal position once the electoral process has concluded.

Under Law Number 17 of 2014, the point of departure for constructing recall as a party prerogative is clearly reflected in Article 239. Article 239 paragraph (1) letter (c) of Law No. 17 of 2014 provides that “a member of the House of Representatives shall be subject to interim replacement because: ... (c) he or she is dismissed.” At first glance, this provision appears neutral; however, the meaning of “dismissed” is given concrete substance through Article 239 paragraph (2). Within this paragraph, several grounds for dismissal are indeed objective in nature and oriented toward the public interest, such as the inability to continuously perform duties, violations of the oath or pledge of office, or conviction pursuant to a court judgment that has obtained final and binding legal force. Nevertheless, among these grounds are two provisions that explicitly personify the authority of political parties: Article 239 paragraph (2) letter (d) of Law No. 17 of 2014, which states that a member of the House of Representatives may be dismissed if “proposed by his or her political party in accordance with the prevailing laws and regulations,” and letter (g), which provides that a member may be dismissed if he or she is “dismissed as a member of a political party in accordance with the prevailing laws and regulations.”

These two provisions are key to understanding that recall is positioned as a consequence of membership relations within a political party. There is not a single provision in Law Number 17 of 2014 that opens any space for constituents or voters in an electoral district to initiate or determine the dismissal of a member of the DPR. Even in cases of ethical violations, the role of the people is not directly present, but is instead mediated through the House of Representatives’ Honorary Council (*Mahkamah Kehormatan Dewan*—MKD), an internal and inherently political organ of the legislature.⁹ This means that, under Law Number 17 of 2014, the right of recall is firmly locked within the institutional domain of political parties and the representative body itself, rather than being conceived as a manifestation of popular sovereignty.

This construction is further reinforced by the procedural mechanism for dismissal as regulated in Article 240 of Law Number 17 of 2014. Article 240 paragraph (1) provides that “the dismissal of a member of the House of Representatives ... shall be proposed by the leadership of the political party to the leadership of the House of Representatives, with a copy to the President.”

⁹ Muchammad Ibnu Shiina Al Musyaawi, Irma Wahyu Maulina, and Muhammad Jazil Rifqi, “Restrukturalisasi Mahkamah Kehormatan Dewan Berbasis Proporsional Dan Independen Di Indonesia: Studi Banding Komisi Etik Indonesia-Amerika,” *Reformasi Hukum* 27, no. 3 (December 31, 2023): 158–68, doi:10.46257/jrh.v27i3.677.

This provision clearly affirms that the initiative for dismissal rests entirely with political parties¹⁰, while the DPR and the President merely perform administrative and formalizing functions. There is no mechanism for consultation with, approval by, or renewed legitimation from the electorate. Based on this provision, recall is constructed as a unilateral prerogative of political organizations.

This construction finds its legal foundation in Law Number 2 of 2011. Law No. 2 of 2011 provides the ideological and juridical basis for party dominance in the recall mechanism by positioning the AD/ART as the primary normative sources governing internal party life. Article 16, paragraph (1) of Law No. 2 of 2011 stipulates that a member of a political party may be dismissed from party membership, *inter alia*, for “violating the articles of association and bylaws.” Furthermore, Article 16, paragraph (2) of Law No. 2 of 2011 affirms that “the procedures for the dismissal of political party membership as referred to in paragraph (1) shall be regulated in the articles of association and bylaws.” This provision wholly delegates the definition of violations, the procedures for examination, and the imposition of dismissal sanctions to the internal norms of political parties. More importantly, Article 16 paragraph (3) of Law No. 2 of 2011 explicitly provides that “where a dismissed political party member is a member of a representative institution, the dismissal from political party membership shall be followed by dismissal from membership in the representative institution in accordance with the prevailing laws and regulations.” This norm constitutes a critical juncture, as it directly links private norms (AD/ART) to public offices obtained through elections. Under this construction, violations of the AD/ART (drafted, interpreted, and enforced by party elites) are endowed with the consequence of revoking the people’s mandate. This arrangement raises serious concerns, given that the AD/ART are, in essence, internal normative instruments of private legal entities. Although political parties perform a public function as participants in elections under Article 22E paragraph (3) of the UUD NRI 1945, the status of the AD/ART has never been transformed into public norms deriving direct legitimacy from the people. Yet, through Article 16 paragraph (3) of Law No. 2 of 2011, the AD/ART are projected beyond their private domain and endowed with binding force over constitutional offices. This is what gives rise to the privatization of

¹⁰ Shevierra Danmadiyah, Xavier Nugraha, and Sayyidatul Insiyah, “A Party’s Recall Right in the Concept of Democratic Country,” *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 2 (November 27, 2019): 151, doi:10.18592/sjhp.v19i2.3184.

the public mandate, whereby the fate of parliamentary office is determined by the internal norms of political organizations.

The dominance of the AD/ART as the source of legitimacy for recall is further reinforced by statutory provisions concerning party sovereignty itself. Article 15, paragraph (1) of Law Number 2 of 2008 on Political Parties (Law No. 2 of 2008) provides that “the sovereignty of a political party rests with its members and is exercised in accordance with the articles of association and bylaws.” Although this norm is internally intended to affirm intra-party democracy, in practice it has instead served as a justificatory basis for treating party decisions, adopted through internal mechanisms, as possessing full legitimacy, including when such decisions have direct consequences for public office. As a result, party sovereignty is positioned as equal to, or even surpassing, popular sovereignty with respect to the continuity of the mandate of members of the DPR.¹¹

This construction is further completed by Law Number 7 of 2017, which, from the recruitment stage through to the post-determination of elected candidates, consistently positions political parties as the dominant actors. Article 241 paragraph (1) of Law No. 7 of 2017 provides that “participating political parties shall conduct the selection of prospective candidates for members of the House of Representatives, provincial Regional Houses of Representatives, and regency/municipal Regional Houses of Representatives.” Paragraph (2) affirms that such selection shall be conducted in accordance with the parties’ articles of association and bylaws. Furthermore, Article 243 of Law No. 7 of 2017 stipulates that the list of prospective candidates and their determination rests entirely in the hands of political party leadership at the relevant levels. From this normative formulation, it is evident that from the outset, the electorate is presented only with candidates who have already been filtered and determined by political parties.

Although Law Number 7 of 2017 adopts an open-list proportional representation system that places candidates’ highest vote totals as the basis for determining elected candidates, as expressly affirmed in Article 422 of Law No. 7 of 2017, this principle is not applied consistently in the post-election phase.

¹¹ This practice has occurred in practice. By way of example, the dismissal of Fahri Hamzah by the *Partai Keadilan Sejahtera* (PKS) constitutes a concrete illustration of party sovereignty within the PAW mechanism. In 2016, PKS dismissed Fahri Hamzah from all levels of party membership through a decision of its *Majelis Tahkim*, because he was deemed to have violated organizational discipline, issued controversial statements, and acted contrary to the party’s political line. This dismissal had direct implications for his position as a member of the DPR and as a Vice Speaker of the House.

When it comes to the dismissal of members of the House of Representatives, Law No. 7 of 2017, in fact, reverts to party-centered logic. Article 426, paragraph (1) of Law No. 7 of 2017 regulates circumstances under which an elected candidate may be replaced; however, in practice, the PAW of sworn-in members of the DPR is governed entirely by the provisions of Law Number 17 of 2014 and Law Number 2 of 2011, both of which position party decisions as the decisive factor. Moreover, under General Election Commission Regulation (PKPU) Number 6 of 2017 as amended by PKPU Number 6 of 2019, one of the principal requirements for PAW is a party dismissal decree signed by the party leadership in accordance with the AD/ART. This further underscores that the General Election Commission (KPU) functions merely as an administrative executor of internal party political decisions.

From the entirety of this normative construction, it is evident that recall is conceptualized as a party prerogative rather than a right of the electorate. The people are present at only a single moment, namely, when casting their votes in the election. Thereafter, the relationship between voters and their representatives is severed and replaced by a hierarchical relationship between members of the DPR and political parties. There is not a single norm that grants voters the right to defend their representatives when confronted with party-initiated recall decisions, nor to initiate the dismissal of members of the DPR who are deemed to have betrayed the popular mandate. By positioning the AD/ART as the source of legitimacy for the revocation of public office, Indonesian positive law has constructed a paradigm of representative democracy oriented toward party sovereignty. The popular mandate is treated as a conditional mandate, the continuity of which is determined by a member's compliance with internal party norms rather than by the judgment of constituents. This paradigm raises serious constitutional concerns, as it stands in contradiction to Article 1 paragraph (2) of the UUD NRI 1945, which affirms that sovereignty rests with the people, not with political parties.

Accordingly, at the normative level, the recall regime established under Law Number 17 of 2014, Law Number 2 of 2011, and Law Number 7 of 2017 constitutes an architecture of power that shifts the locus of sovereignty from the people to political parties. The articles of AD/ART, as private norms, have been endowed with public effect in determining the fate of constitutional offices, while the people, as the ultimate holders of sovereignty, are excluded from the decision-making process. This is the fundamental problem of Indonesian representative democracy, one that demands a critical re-reading by both the legislature and the Constitutional Court as the guardian of the Constitution.

B. PAW as an Instrument of Political Discipline

The PAW mechanism for members of the House of Representatives, as constructed within Indonesia's positive law, cannot be understood merely as an administrative device aimed at maintaining the effectiveness of the representative institution. On the contrary, when read systematically and critically, PAW functions as an instrument of political discipline that positions political parties as the central locus of control over the conduct, attitudes, and even the representative orientation of members of the DPR.¹² PAW is not operated as a mechanism of popular accountability; rather, it is exercised as an internal party control tool that operates through hierarchical and subordinative relations between political parties and elected representatives.¹³ This construction demonstrates that PAW is not designed to address questions of representatives' accountability to their constituents. No norm links PAW to a member's failure to fulfill campaign promises, disregard for voters' aspirations, or loss of social legitimacy within the electoral district. Instead, the primary parameter determining the application of PAW is the conformity of a member's conduct with the will and political line of the party. In this sense, PAW functions as a political sanction for internal dissent, rather than as a democratic corrective for the betrayal of the people's mandate.

The disciplinary character of PAW becomes even more apparent when viewed in conjunction with Law Number 2 of 2011. Article 16, paragraph (1) of Law No. 2 of 2011 provides that a political party member may be dismissed from party membership, *inter alia*, for "violating the articles of association and bylaws." Article 16, paragraph (2) further affirms that the procedures for such dismissal are regulated entirely by the articles of association and bylaws. When read together with Article 16 paragraph (3), which stipulates that the dismissal of party membership for members of representative institutions shall be followed by dismissal from the representative institution, these provisions demonstrate that the AD/ART function as a normative disciplinary instrument over public office. Violations of internal party norms, norms that are not necessarily connected to the public interest, may thus result in the revocation of an electoral mandate. This shifts the function of PAW from a mechanism of external accountability to one of internal compliance. Democratic

¹² Jon Samuel Sonbay, I Gusti Bagus Suryawan, and I Nyoman Utama, "Mekanisme Pergantian Antar Waktu (PAW) Anggota Dewan Perwakilan Rakyat Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Analogi Hukum* 3, no. 2 (September 30, 2021): 147–51, doi:10.22225/ah.3.2.2021.147-151.

¹³ Muttaqien, "Implikasi Penggantian Antar Waktu (PAW) Anggota DPR/DPRD Oleh Partai Politik Terhadap Demokrasi."

accountability presupposes a relationship of responsibility between the representative and the represented¹⁴, namely the people. Yet, under the prevailing PAW design, this relationship of accountability is redirected into an organizational relationship between members of the DPR and political parties. As a consequence, the loyalty of elected representatives is oriented toward the party structures that hold recall authority.¹⁵

The role of the articles of AD/ART in this construction is decisive. As defined in Article 1, points 2 and 3 of Law Number 2 of 2011, the AD and ART constitute the basic rules and implementing regulations formulated internally by political parties. Article 5, paragraph (1) of Law No. 2 of 2011 even provides that the AD and ART may be amended in accordance with the dynamics and needs of the political party, so long as such amendments are decided by the party's highest forum. This means that the norms used to assess the loyalty and compliance of members of the DPR are flexible, internal, and entirely under the control of party elites. Accordingly, PAW functions as a latent threat that continually looms over members of the DPR, compelling them to remain aligned with the party's political line. This situation has significant implications for the status of members of the DPR. They are no longer positioned as holders of the people's mandate, enjoying relative autonomy in exercising legislative, budgetary, and oversight functions as provided in Article 20A paragraph (1) of the UUD NRI 1945. Instead, they are treated as delegates of political organizations whose continuation in office depends on structural compliance. In other words, members of the DPR are reduced to extensions of the party apparatus, rather than free and responsible representatives of the people's interests.

This reduction becomes even more problematic when situated within the open-list proportional electoral system adopted in Indonesia. Article 422 of Law Number 7 of 2017 affirms that the determination of elected members of the DPR is based on the candidates' highest vote totals within an electoral district. This norm explicitly recognizes the individual legitimacy of candidates as deriving directly from the people. However, such legitimacy is not accompanied by commensurate protection for the independence of the representative

¹⁴ James D. Fearon, "Electoral Accountability and the Control of Politicians: Selecting Good Types versus Sanctioning Poor Performance," in *Democracy, Accountability, and Representation* (Cambridge: Cambridge University Press, 1999), 55–97, doi:10.1017/CBO9781139175104.003; Alexander H. Trechsel, "Reflexive Accountability and Direct Democracy," *West European Politics* 33, no. 5 (September 10, 2010): 1050–64, doi:10.1080/01402382.2010.486128.

¹⁵ Subhan, "Recall: Antara Hak Partai Politik Dan Hak Berpolitik Anggota Parpol."

mandate. In the practice of PAW, the votes cast by the people for individual candidates may be unilaterally nullified by political parties through internal mechanisms that do not involve the electorate. PAW thus operates as a mechanism of political homogenization. Members of the DPR who deviate from the party line, even where such deviation may in fact be motivated by constituent aspirations, face the risk of being subjected to PAW sanctions. This creates incentives for legislators to prioritize loyalty to their parties over accountability to the people.¹⁶ As a result, the function of substantive representation is eroded by the imperative to maintain political position within party structures.

The Constitutional Court, through Decision Number 199/PUU-XXIII/2025, has in fact affirmed this construction by holding that party-initiated recall is a logical consequence of Article 22E paragraph (3) of the UUD NRI 1945, which designates political parties as participants in elections. This reasoning reinforces the character of PAW as an instrument of political discipline, as the Constitutional Court positions political parties as the primary actors in representative democracy, while the people are relegated to the role of providing an initial and temporary source of legitimacy. The Constitutional Court does not interrogate the fact that recall was never designed as a mechanism of popular accountability; instead, it legitimizes party dominance over the mandate of elected representatives. Moreover, the Court's argument that voters may "express objections" to political parties or simply refrain from re-electing members of the DPR in subsequent elections reflects a highly minimalistic conception of democratic accountability. Such accountability is ex post and periodic in nature, offering no protection whatsoever against the abuse of party power during an ongoing term of office. In the context of PAW, effective control lies in the hands of political parties rather than the people. Functionally, PAW has never been intended to strengthen the representative-constituent relationship, but rather to preserve internal party cohesion, discipline, and stability. PAW operates as a tool to ensure that members of the DPR do not deviate from the party's ideological, political, and strategic line. This function is problematic because it blurs the distinction between political representation and organizational delegation. Elected representatives ought to act based on a public mandate and constitutional considerations, not merely in accordance with the instructions or interests of the organization that nominated them.

¹⁶ Hufon et al., "The Power to Remove: A Comparative Inquiry Into Recall Mechanisms in Indonesia and The Philippines."

By construing recall as a party prerogative and treating it as a sanction for internal non-compliance, positive law has shifted the orientation of representative democracy away from the people and toward political organizations. Elected representatives are no longer positioned as subjects accountable to voters, but rather as delegates who may be withdrawn by their parties at any time. PAW cannot be sustained as a mechanism of democratic accountability. Instead, it operates as a form of internal vertical control that amputates the autonomy of elected representatives and marginalizes the role of the people once elections have concluded. Accordingly, criticism of PAW strikes at the very core of representative democracy itself: who, in truth, holds sovereignty over the mandate of elected representatives, the people or political parties?

Analysis of the Ratio Decidendi of Constitutional Court Decision Number 199/PUU-XXIII/2025

A. Repetition of Jurisprudence and the Failure of Constitutional Rethinking

The reasoning of Constitutional Court Decision No. 199/PUU-XXIII/2025 should not be understood as an isolated judicial determination. Rather, the decision forms part of a continuing line of Constitutional Court jurisprudence concerning the constitutional status of PAW of DPR. The doctrinal trajectory can be traced from Decision No. 38/PUU-VIII/2010 to Decisions No. 22/PUU-XXIII/2025 and No. 41/PUU-XXIII/2025, and ultimately to Decision No. 199/PUU-XXIII/2025. This sequence lies not merely in the consistency of the Court's conclusions, but in the repeated incorporation of earlier legal reasoning into subsequent cases through the application of the *mutatis mutandis* formula. In Decision No. 199/PUU-XXIII/2025, the Court expressly concluded that the legal considerations of Decision No. 22/PUU-XXIII/2025 applied *mutatis mutandis* because the substance of the petition was considered to be the same and the Court had not found sufficiently strong and fundamental reasons to depart from its previous position.

The starting point of this jurisprudential trajectory is Decision No. 38/PUU-VIII/2010. In that decision, the Court considered the constitutional position of political parties in relation to PAW by emphasizing that candidates for the DPR are nominated by political parties and therefore constitute representations of political parties within the legislature. The Court reasoned

that, because political parties are participants in elections for the DPR and DPRD under Article 22E paragraph (3) of UUD NRI 1945, it is considered proportionate for political parties to possess authority to conduct PAW against their members serving in representative institutions. At the same time, the Court acknowledged the potential danger inherent in party-controlled recall, particularly the possibility that recall authority could be used to silence legislators and impair their ability to perform their representative functions. The Court nevertheless maintained the constitutionality of party-initiated PAW, subject to statutory requirements and party rules and to the availability of legal remedies against arbitrary implementation¹⁷.

The reasoning in Decision No. 38/PUU-VIII/2010 is significant because it establishes the foundational doctrinal relationship between the constitutional status of political parties and the authority to recall elected representatives. The Court's reasoning proceeds from the proposition that political parties are electoral participants to the conclusion that they may legitimately exercise authority over the continuation of their members' parliamentary positions. This inference is important because Article 22E paragraph (3) expressly identifies political parties as participants in elections, but does not expressly designate political parties as holders of the representative mandate after the election has been completed. The justification for party-initiated PAW therefore depends upon an interpretive connection between the party's role in electoral nomination and its continuing institutional relationship with the elected representative. It is precisely this connection that later jurisprudence repeatedly reproduces.

The issue became particularly evident in the Court's 2025 jurisprudence. Decision No. 22/PUU-XXIII/2025 reaffirmed the position of political parties within Indonesia's representative democracy and maintained the legitimacy of party-initiated PAW. The Court's reasoning again linked the position of political parties as participants in legislative elections with their authority in relation to the continuation of parliamentary membership. The Court also addressed the possibility of involving constituents in the recall process and rejected the proposition that a constituent-based mechanism should replace the existing party-controlled mechanism within the prevailing representative electoral structure. The reasoning thus preserved the institutional primacy of political parties in determining the continuity of parliamentary representation.

Decision No. 41/PUU-XXIII/2025 subsequently reinforced this position. In examining another challenge to Article 239 paragraph (2) letter (d) of Law

¹⁷ See Putusan MK No. 38/PUU-VIII/2010, paras. 3.17.3–3.17.5

No. 17 of 2014, the Court treated the constitutional issue as substantially connected to the issue previously examined in Decision No. 22/PUU-XXIII/2025. Rather than developing an independent framework for assessing party-initiated PAW, the Court maintained the position established in the earlier decision. The Court expressly stated that, because it had no strong and fundamental reason to depart from its previous legal considerations, the reasoning of Decision No. 22/PUU-XXIII/2025 applied *mutatis mutandis*.

This sequence is important because it demonstrates that the reasoning subsequently relied upon in Decision No. 199/PUU-XXIII/2025 had already become a recurring judicial position. Decision No. 199 did not construct a substantially new justification for party-initiated PAW. Instead, the Court again relied on the existing line of jurisprudence and concluded that the reasoning developed in the earlier decisions remained applicable. The Court's conclusion is therefore better understood as the consolidation of an existing doctrinal position than as reconsideration of the relationship between political parties, elected representatives, and voters. The repeated use of the *mutatis mutandis* formula is particularly significant because it demonstrates the mechanism through which the earlier reasoning was transferred from one dispute to another.

Consistency in adjudication is not, in itself, constitutionally problematic. A constitutional court is ordinarily expected to maintain doctrinal stability and to provide coherent reasons for departing from established jurisprudence. The problem therefore does not lie simply in the Court's refusal to depart from its earlier decisions. Rather, the difficulty arises when consistency takes the form of repeated application of an earlier doctrinal premise without reconsidering whether that premise remains adequate in light of changes in the constitutional and electoral context. The distinction between precedential consistency and jurisprudential repetition is consequently essential. The former preserves coherence while remaining open to principled reconsideration; the latter risks reproducing an established conclusion without re-examining the assumptions upon which that conclusion rests.

This distinction becomes particularly relevant because the electoral context underlying the contemporary dispute over PAW is not identical to the context in which the Court formulated its earlier reasoning. Indonesia's legislative elections operate under an open-list proportional representation system in which individual candidates obtain electoral legitimacy through the votes they

receive.¹⁸ Article 422 of Law No. 7 of 2017 determines the allocation of seats among candidates based on the highest number of votes obtained by candidates within the relevant electoral district.¹⁹ Consequently, although political parties remain indispensable institutional actors in legislative elections, the electoral mandate of an individual DPR member is also directly connected to the preferences expressed by voters through individual votes. This relationship requires consideration when assessing whether an earlier party-centered conception of PAW can simply be carried forward without modification.

The Court's repeated reliance on Article 22E paragraph (3) UUD NRI 1945 also requires a more precise distinction between participation in elections and control over the parliamentary mandate. Article 22E paragraph (3) UUD NRI 1945 provides that political parties are participants in elections for members of the DPR and DPRD.²⁰ This provision recognizes the institutional role of political parties in the electoral process. It does not, however, expressly provide that political parties become the holders or owners of the representative mandate after an election has taken place. The conclusion that political parties may therefore determine the continuation of an elected representative's mandate constitutes an additional interpretive step. That step may be supported by statutory regulation and by the institutional logic of political parties, but it cannot be treated as an automatic consequence of Article 22E paragraph (3) UUD NRI 1945. The legitimacy of that inference therefore requires an independent assessment against the principle of popular sovereignty under Article 1 paragraph (2) UUD NRI 1945.

The distinction is particularly important because the parliamentary mandate has a dual institutional dimension. Horizontally, an elected representative remains connected to the political party through which he or she participates in the electoral process. Vertically, however, the representative is accountable to the electorate whose votes determine the individual's election. A

¹⁸ Syarifuddin Jurdi, Basti Teteng, and Fauzi Hadi Lukita, "Analisis Terhadap Sistem Pemilu Indonesia: Dari Proporsional Tertutup Ke Proporsional Terbuka," *VOX POPULI* 6, no. 2 (January 9, 2024): 145–61, doi:10.24252/vp.v6i2.44274.

¹⁹ Feri Abraham, Kuku Sudarmanto, and Urip Giyono, "Mekanisme Sistem Proporsional Terbuka Pada Pemilihan Dewan Perwakilan Rakyat Di Indonesia," *Jurnal Jendela Hukum* 11, no. 1 (April 25, 2024): 112–28, doi:10.24929/jjh.v11i1.3500.

²⁰ Andrew Shandy Utama, "Pengaturan Partai Politik Di Indonesia," *ANDREW Law Journal* 2, no. 2 (December 31, 2023): 44–52, doi:10.61876/alj.v2i2.19; M. Alpi Syahrin and Imelda Sapitri, "Peran Partai Politik Dalam Demokrasi Perwakilan," *EKSEKUSI* 2, no. 2 (October 1, 2020): 146, doi:10.24014/je.v2i2.10767; Rifky Sandy et al., "Peran Partai Politik Terhadap Kekuasaan Legislatif," *Jurnal Panorama Hukum* 9, no. 1 (June 30, 2024): 1–16, doi:10.21067/jph.v9i1.9415.

conception of PAW that focuses exclusively on the horizontal relationship between party and representative risks obscuring the vertical relationship between representative and voters.²¹ The question is therefore not whether political parties have a legitimate interest in maintaining party discipline and organizational integrity. They plainly do. The question is whether that legitimate institutional interest necessarily extends to an unrestricted authority to terminate an individually legitimized parliamentary mandate.

The Court itself recognized in its earlier jurisprudence that party-initiated PAW may produce competing constitutional interests. In Decision No. 38/PUU-VIII/2010, the Court acknowledged both sides of the problem: unrestricted party authority could potentially be used to suppress representatives²², while the absence of party authority could leave political parties unable to respond to members who violate party rules or damage the party's institutional integrity. This recognition is important because it demonstrates that the problem cannot be reduced to a simple opposition between party autonomy and individual political rights. It concerns the appropriate institutional balance among party discipline, representative independence, voter sovereignty, and accountability.

The difficulty with the later jurisprudence is therefore not that the Court ignored the existence of competing interests. Rather, the difficulty lies in the limited extent to which those interests are re-evaluated in light of the contemporary electoral system. Decisions No. 22/PUU-XXIII/2025, No. 41/PUU-XXIII/2025, and No. 199/PUU-XXIII/2025 repeatedly preserve the earlier position, but the repeated conclusion does not necessarily establish that the underlying constitutional reasoning remains equally persuasive. The constitutional of individual electoral votes has become increasingly important in an electoral system in which candidates obtain seats through the votes they individually receive. An analysis that continues to treat the party as the dominant source of the parliamentary mandate must therefore explain why the individual electoral relationship between candidate and voter does not impose corresponding limits upon party-controlled recall.

²¹ Sultoni Fikri and Imranullah Akhtar, "Who Owns the Parliamentary Seat? Party Sovereignty, Legislative Recall, and Republican Justice in Indonesia's Democracy," *Jurnal Mimbar Keadilan* 19, no. 1 (February 4, 2026): 149–66.

²² Dessy Ariani, "Hak Recall Partai Politik Dalam Sistem Perwakilan Di Indonesia Di Era Reformasi (Analisis Yuridis Dan Politis Terhadap Putusan Mahkamah Konstitusi No. 008/PUU-IV/2006 Dan No. 38/PUU-VIII/2010)" (Tesis, Universitas Islam Indonesia, 2012).

The Court's rejection of constituent-initiated recall illustrates the same problem. The Court has considered concerns such as the secrecy of voting, the principle of one person, one vote, and the character of representative democracy in evaluating mechanisms that would allow voters to participate directly in the removal of elected representatives. Such concerns are relevant. Nevertheless, the absence or practical difficulty of a constituent-recall mechanism does not logically resolve the separate question of whether the existing party-controlled mechanism adequately protects popular sovereignty. The choice is not necessarily between unrestricted party recall and an unrestricted constituent recall. Intermediate mechanisms may also be considered, including procedural safeguards, independent review, transparency requirements, and forms of constituent participation that do not undermine electoral secrecy. The existence of difficulties in designing constituent recall therefore cannot, by itself, establish the superiority of unrestricted party control.

The repeated invocation of precedent becomes particularly consequential at this point. By treating the reasoning of earlier decisions as applicable *mutatis mutandis*, the Court achieves doctrinal continuity, but it does not necessarily address whether the relationship between political parties and voters has changed sufficiently to require doctrinal reconsideration. The problem is thus one of temporal adequacy: whether a constitutional interpretation developed in an earlier institutional and electoral context remains sufficiently responsive to the present structure of electoral representation. A constitutional court should not be required to abandon precedent merely because social or political circumstances change. However, where a change affects the constitutional basis of the relationship being adjudicated²³, precedent should be subjected to renewed constitutional scrutiny rather than mechanically reproduced.

The jurisprudential sequence from Decision No. 38/PUU-VIII/2010 through Decisions No. 22/PUU-XXIII/2025, No. 41/PUU-XXIII/2025, and No. 199/PUU-XXIII/2025 therefore reveals a pattern that may be described as jurisprudential repetition. The repetition does not consist merely of similar outcomes. It concerns the reproduction of the same underlying doctrinal premise: that the position of political parties as participants in legislative elections provides a basis for recognizing their continuing authority over the parliamentary membership of their elected representatives. The repeated application of this premise becomes problematic because the Court has not

²³ Scott Baker and Claudio Mezzetti, "A Theory of Rational Jurisprudence," *Journal of Political Economy* 120, no. 3 (June 2012): 513–51, doi:10.1086/666655.

correspondingly developed an equally explicit account of how individual electoral votes constrain that authority.

The central concern is consequently not precedent itself, but the absence of rethinking accompanying its repetition. Rethinking does not necessarily require the Court to reach the opposite conclusion. It requires the Court to revisit the premises of its earlier position, test those premises against the present electoral framework, and explain why the balance between competing constitutional interests should remain unchanged. In the context of PAW, such reconsideration would require the Court to address, at minimum, the relationship between Article 1 paragraph (2) and Article 22E paragraph (3) of the UUD NRI 1945, the significance of individual votes under the open-list proportional system, the legitimate autonomy of political parties, and the accountability of elected representatives to their constituents.

The absence of such reconsideration creates a risk that the role of political parties as electoral participants will gradually be transformed into a broader conception of political parties as controllers of the representative mandate. This is a doctrinal shift. The former concerns the party's role in organizing and participating in elections; the latter concerns the authority to determine whether an individual who has already obtained a parliamentary seat through electoral support may continue to exercise that mandate. Treating these two forms of authority as equivalent risks collapsing the distinction between the legitimacy of political parties and the popular legitimacy expressed through individual votes.

Accordingly, the jurisprudential repetition identified in the 2025 decisions should be understood as an issue in its own right. The persistence of the same doctrinal conclusion across successive cases demonstrates the Court's commitment to consistency, but consistency alone cannot substitute for justification. Where the electoral system places direct weight on individual candidate votes, the relationship between voters and representatives becomes too significant to be addressed solely through the relationship between political parties and their members.²⁴ The Court's continued reliance on its earlier jurisprudence without adequately reconsidering this relationship risks preserving a party-centered conception of the parliamentary mandate at the expense of the vertical accountability generated by the electoral process.

²⁴ Malicia Evendia, "Implikasi Hak Recall Partai Politik Terhadap Sistem Kedaulatan Rakyat," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 6, no. 3 (October 23, 2015), doi:10.25041/fiatjustisia.v6no3.357.

The subsequent jurisprudence further illustrates the persistence of this doctrinal trajectory. In Decision No. 44/PUU-XXIV/2026, the Court again referred to Decisions No. 22/PUU-XXIII/2025, No. 41/PUU-XXIII/2025, and No. 199/PUU-XXIII/2025 and maintained the same constitutional position concerning party-initiated PAW. The Court again concluded that the legal considerations of Decision No. 22/PUU-XXIII/2025 applied *mutatis mutandis* and that there were no strong and fundamental reasons to depart from the established position. Although Decision No. 44/PUU-XXIV/2026 falls outside the primary temporal focus of this study, it provides confirmatory evidence that the jurisprudential repetition identified in Decision No. 199/PUU-XXIII/2025 was not an isolated occurrence. Rather, the doctrinal position continued to be reproduced in subsequent adjudication.

This continuing trajectory strengthens the argument that the central question is not simply whether party-initiated PAW is formally permitted by statute. The deeper issue concerns the distribution of authority over the parliamentary mandate. If the mandate is understood primarily through the relationship between political parties and their members, party sovereignty will necessarily dominate the post-election relationship. If, by contrast, the mandate is understood as deriving from the people whose individual votes determine the election of representatives, party authority must be balanced against a corresponding obligation of vertical accountability to constituents. The difficulty identified in the Court's jurisprudence arises from the fact that the former relationship has been repeatedly articulated and reaffirmed, while the latter has not received equivalent doctrinal development.

The Court's jurisprudential consistency therefore produces an ambivalent effect. On one hand, it provides legal certainty to political parties and preserves the organizational integrity of representative institutions. On the other, the repeated application of a party-centered conception of PAW without renewed constitutional scrutiny may weaken the role of voters after the election has concluded. Popular sovereignty remains formally recognized because citizens continue to exercise the right to vote. Yet that vote may be diminished if the actor that nominated the representative retains decisive authority to terminate the representative's mandate without a corresponding mechanism through which constituents can meaningfully participate in that decision.

For this reason, jurisprudential repetition becomes problematic when it operates without constitutional rethinking. The issue is not whether the Court should disregard precedent, nor whether political parties should be deprived of their legitimate organizational authority. The issue is whether the justification for party-initiated PAW has been reconsidered in light of the contemporary

electoral system and the constitutional principle that sovereignty rests with the people. Decision No. 199/PUU-XXIII/2025 represents the culmination of a jurisprudential sequence in which the Court repeatedly preserved the same doctrinal position. Its significance lies not only in the outcome of the individual case, but in the consolidation of a jurisprudential model in which party authority remains dominant over the post-election parliamentary mandate.

B. The Reduction of Popular Sovereignty to an Electoral Procedure

The reasoning of the Constitutional Court in Decision No. 199/PUU-XXIII/2025 reveals a reductive tendency in its understanding of the principle of popular sovereignty, namely by lowering it to a merely periodic electoral procedure that effectively ends at the five-yearly moment of voting. This approach shifts sovereignty from a substantive principle that should operate throughout the entire term of office of elected representatives into a purely procedural right that is exhausted on election day. Popular sovereignty is thus deemed to be fully exercised when citizens cast their votes in elections, whereas in the post-electoral phase, that sovereignty appears to be “suspended” and replaced by the sovereignty of political parties through the mechanism of PAW. This line of reasoning is clearly reflected in the Constitutional Court’s statement that if voters consider a member of the DPR to be unworthy, they “should not re-elect that member of the DPR in the next election.” Such a statement implicitly affirms that the sole channel for the expression of popular sovereignty lies in the subsequent election, rather than in mechanisms of oversight, correction, or meaningful participation during the representative’s term of office.

Such an approach runs counter to the doctrine of constitutional democracy, which conceives popular sovereignty as a continuous principle rather than an episodic one. Drawing on Jean-Jacques Rousseau, popular sovereignty is inalienable, such that any mechanism of representation must remain constantly linked to the general will (*volonté générale*).²⁵ Likewise, in

²⁵ Tracy B. Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary* (Maryland: Rowman & Littlefield Publishers, 2002); Mads Qvortrup, *The Political Philosophy of Jean-Jacques Rousseau: The Impossibility of Reason* (Manchester: Manchester University Press, 2004); Giovanni Caporioni, “Rousseau’s General Will,” *Poliarchia* 3, no. 5 (July 30, 2021): 59–92, doi:10.12797/Poliarchia.03.2015.05.04; Daya Negri Wijaya, “Jean-Jacques Rousseau Dalam Demokrasi,” *Politik Indonesia: Indonesian Political Science Review* 1, no. 1 (January 15, 2016): 14–29, doi:10.15294/jpi.v1i1.9075; Stuart White, “Rousseau and the

theories of representation as developed by Hanna Pitkin, representation does not end with the process of authorization (election), but must be accompanied by accountability mechanisms that enable the people to correct and control their representatives.²⁶ The Constitutional Court's decision instead severs this chain of accountability by confining the role of the people solely to the initial phase of authorization.

This reduction of popular sovereignty becomes even more problematic when viewed in light of the open-list proportional electoral system. Article 422 of Law No. 7 of 2017 expressly provides that “the determination of elected candidates for members of the DPR, provincial DPRD, and regency/municipal DPRD from participating political parties is based on the number of seats obtained by the political party in an electoral district, as allocated according to the highest number of votes received by each candidate.” This provision affirms that political legitimacy attaches to individual candidates directly chosen by the electorate, rather than residing solely in political parties. However, by foreclosing all avenues of constituent involvement in the post-electoral phase, the Constitutional Court has effectively emptied this personal legitimacy of its substantive meaning. Moreover, the Court rejects the idea of constituent participation in the PAW mechanism on the technical ground that elections are conducted by secret ballot, such that “it is impossible to know who voted for whom.” This reasoning reflects a categorical error between the principle of ballot secrecy and the concept of popular political participation. Article 22E(1) of the UUD NRI 1945 indeed enshrines the principle of secret elections, but this principle is intended to protect voters' freedom from pressure and intimidation, not to foreclose popular participation in overseeing representatives after elections have concluded. To invoke the secrecy of the ballot as a categorical justification for denying constituent involvement constitutes a misplaced reliance on constitutional norms.

No provision in the UUD NRI 1945 prohibits the development of mechanisms for popular participation in the post-electoral phase. On the contrary, Article 28C(2) of the UUD NRI 1945 guarantees the right of every person “to develop themselves through the collective struggle for their rights to build society, the nation, and the state.” This guarantee opens constitutional space for public involvement in processes of political correction *vis-à-vis* their representatives. The Constitutional Court, however, has opted for a defensive

Meaning of Popular Sovereignty,” in *Ideas That Matter* (Oxford University Press, 2019), 68–88, doi:10.1093/oso/9780190904951.003.0004.

²⁶ Hanna Fenichel Pitkin, *The Concept of Representation* (University of California Press, 1967), doi:10.1525/9780520340503.

approach that closes off such space, while simultaneously affirming the dominance of political parties as the sole subjects authorized to exercise corrective power through the PAW mechanism. A democratic system that reduces popular participation to elections alone tends to generate practices of power marked by weak accountability.²⁷ The Constitutional Court's decision risks steering Indonesia in this direction, positioning the people as passive holders of sovereignty, while political parties emerge as dominant actors exercising control over representatives without direct oversight by voters. This trajectory runs counter to the ideal of responsive democracy, which requires open and effective channels through which citizens can scrutinize and correct their representatives.²⁸

The reduction of popular sovereignty is also evident in the Court's disregard of Article 20A(1) of the UUD NRI 1945, which affirms the functions of the DPR as the embodiment of popular representation through its legislative, budgetary, and oversight functions. These functions are not intended to be exercised in the interests of political parties, but rather in the interests of the people as the holders of sovereignty. When members of the DPR may be removed solely based on internal party decisions grounded in AD/ART, the orientation of the DPR's functions is liable to shift from the public interest toward the interests of political organizations. Accordingly, Constitutional Court Decision No. 199/PUU-XXIII/2025 has, at a conceptual level, reduced popular sovereignty to a mere five-year electoral procedure and foreclosed avenues for constituent involvement under the technical pretext of the secrecy of the ballot. This reduction not only contradicts the fundamental principle enshrined in Article 1(2) of the UUD NRI 1945, but also runs counter to the evolution of constitutional democracy, which demands continuous accountability. While the people continue to be formally recognized as the holders of sovereignty, that sovereignty is deprived of its controlling force and transformed into a procedural symbol effectively managed by political parties in the post-electoral phase.

²⁷ Peter Hupe and Arthur Edwards, "The Accountability of Power: Democracy and Governance in Modern Times," *European Political Science Review* 4, no. 2 (July 11, 2012): 177–94, doi:10.1017/S1755773911000154.

²⁸ Claudia Landwehr and Armin Schäfer, "The Promise of Representative Democracy: Deliberative Responsiveness," *Res Publica* 31, no. 2 (June 2, 2025): 359–79, doi:10.1007/s11158-023-09640-0.

Constitutional Critique: From Popular Sovereignty to Party Sovereignty

A. Party Sovereignty as the Latent Paradigm of the Constitutional Court's Decision

Constitutional Court Decision No. 199/PUU-XXIII/2025 implicitly reflects a paradigm that may be described as party sovereignty²⁹, namely a conceptual framework that positions political parties as the ultimate holders of authority over the mandate of members of the DPR. This paradigm is never expressly articulated by the Constitutional Court; nevertheless, it is clearly discernible from the manner in which the Court interprets the relationship between the people, political parties, and elected representatives. Within this paradigm, the mandate obtained by members of the DPR from the people through elections is not treated as an autonomous public mandate, but rather as a conditional mandate whose continuity is fully subject to the will and internal discipline of political parties, as embodied in their AD/ART.

The distinction between subjects participating in elections and holders of sovereign mandates is fundamental. Election participants are legal subjects entitled to nominate candidates and take part in electoral competition, whereas the holder of the sovereign mandate is the people as the ultimate source of political legitimacy. There is no constitutional norm that transfers such sovereignty to political parties. However, through its repeated affirmation of PAW, the Constitutional Court has de facto constructed political parties as the ultimate authorities over the continuity of DPR mandates. This party sovereignty paradigm is further reinforced when the Constitutional Court characterizes the PAW mechanism as part of an “effort to maintain a balance in the relationship between political parties, legislative candidates, and constituents.” The “balance” envisaged by the Court is, in reality, deeply asymmetrical. In practice, constituents possess no legal instruments whatsoever to influence the continuation of their representatives’ mandates, while political parties enjoy full authority to revoke such mandates through PAW proposals. This construction is reflected in Article 239 paragraph (2) letter (d) of Law No.

²⁹ For conceptual clarity, the term “party sovereignty” in this article is used as an analytical construct developed by the author and does not represent terminology employed by the Constitutional Court itself. The term refers to the party-centred allocation of authority over the continuation of parliamentary mandates that emerges from the Court's jurisprudence on PAW. It should therefore be distinguished from the principle of popular sovereignty under Article 1 paragraph (2) of the 1945 Constitution and from the recognition of political parties as electoral participants under Article 22E paragraph (3).

17 of 2014, which provides that a member of the DPR may be replaced between terms if “proposed by his or her political party in accordance with the provisions of the laws and regulations.”

Furthermore, Law No. 2 of 2011 reinforces party dominance over DPR mandates by designating AD/ART as the primary source of legitimacy for dismissal actions. Article 16, paragraph (1) letter (d) of Law No. 2 of 2011 provides that a member of a political party may be dismissed if he or she “violates the AD/ART.” Article 16, paragraph (3) of the same Law further stipulates that “where a dismissed member of a political party is also a member of a representative institution, such dismissal from party membership shall be followed by dismissal from membership in the representative institution in accordance with the prevailing laws and regulations.” This provision unequivocally treats violations of internal party rules as sufficient grounds for the revocation of public office obtained through elections. As a result, the popular mandate conferred through elections is transformed into a conditional mandate, the continuation of which depends on a DPR member’s compliance with party statutes and by-laws. This condition is constitutionally problematic, as it conflates the private–organizational legal regime with the public–constitutional legal regime. AD/ART constitute internal norms arising from the organizational autonomy of political parties, as affirmed in Article 1, points 2 and 3 of Law No. 2 of 2011. To elevate such internal norms as a basis for revoking a public mandate is to place the fate of a public office in the unilateral hands of a private organization.

The Constitutional Court seeks to mitigate criticism of this party dominance by asserting that the authority to initiate PAW must not be exercised arbitrarily and must remain subject to due process of law, *inter alia*, through proceedings before the MKD and the availability of judicial remedies. However, this assertion fails to address the more fundamental constitutional problem, namely, the question of who is the legitimate holder of the representative mandate. Due process regulates the manner in which a mandate may be revoked; it does not resolve the issue of the legitimacy of the revocation itself. As long as the Constitutional Court continues to recognize political parties as the ultimate holders of authority over DPR mandates, the principle of popular sovereignty remains subordinated. In constitutional terms, the mandate of representatives derives from the people as voters, not from political parties as electoral vehicles. The open-list proportional system adopted in Indonesia reinforces this premise, as the determination of elected candidates is based on the highest number of individual votes, as stipulated in Article 422 of Law No. 7 of 2017. Nevertheless, the paradigm of party sovereignty embraced by the

Constitutional Court effectively empties this personal vote of its meaning by positioning political parties as the “owners of seats” and members of the DPR as merely “conditional mandate holders.”

Accordingly, Constitutional Court Decision No. 199/PUU-XXIII/2025 does not merely preserve the legal regime governing PAW, but more fundamentally entrenches a latent paradigm³⁰ in which popular sovereignty is diminished and effectively supplanted by party sovereignty. Under this paradigm, the people’s mandate is fragmented and subordinated to the internal norms of political parties. As a consequence, Indonesia’s representative democracy drifts away from the principle of popular sovereignty toward a party-centered model of democracy, in which political parties occupy the locus of power, while the people are reduced to providers of initial electoral legitimacy, deprived of any meaningful control over their representatives thereafter.

B. PAW as a Form of Privatization of Public Power

The constitutional problem presented by PAW extends beyond the question of whether political parties possess sufficient legal authority to replace members of the DPR. It also concerns the institutional location of the power to terminate a parliamentary mandate. Although PAW is regulated through public law and produces consequences for the composition of a constitutionally established representative institution, the decisive initiating authority is placed in the hands of a political party. This arrangement raises a broader question concerning the exercise of public power by a non-state political organisation: whether a power that directly affects the continuation of a representative mandate may constitutionally be exercised primarily through an internal party decision.

³⁰ The paradigm is described as “latent” because it is not articulated by the Court as a single constitutional principle or doctrinal formula. It emerges instead from the cumulative effect of several propositions appearing across the Court’s jurisprudence: the constitutional importance of political parties, the party’s relationship with its elected representatives, the legitimacy of party discipline, and the recognition of party-initiated PAW. Taken individually, none of these propositions necessarily establishes party sovereignty. Considered together, however, they produce a configuration in which the political party occupies a structurally dominant position in determining the continuation of parliamentary representation. The concept therefore operates as an interpretive synthesis of the Court’s reasoning rather than as a quotation or doctrinal label originating from the Court itself.

This issue can be illuminated through the concept of constitutional outsourcing developed by Rosenbloom and Piotrowski³¹. Their analysis concerns the consequences of outsourcing public administrative functions to private entities, particularly the difficulty of determining whether constitutional and administrative-law constraints applicable to government action should continue to govern functions performed by private contractors. Their central concern is therefore not merely the transfer of governmental tasks, but the implications of allowing non-governmental actors to perform functions that have traditionally been associated with public authority.³² The concept is particularly useful for the present analysis because PAW similarly raises a question concerning the exercise of a function with public consequences by an actor that is distinct from the state.

The analogy, however, must be approached with caution. Political parties in Indonesia cannot simply be equated with private contractors exercising outsourced governmental functions. Article 22E paragraph (3) of UUD NRI 1945 expressly recognises political parties as participants in elections for the DPR and DPRD. Political parties therefore occupy a constitutionally recognised position within the electoral structure rather than functioning as ordinary private entities operating outside the constitutional framework. Moreover, political parties perform functions that are integral to representative democracy, including the recruitment and nomination of legislative candidates.³³ The status of political parties consequently distinguishes them from private contractors to whom governmental functions are merely delegated through administrative arrangements.

³¹ The concept is used here as a functional analytical analogy rather than as a claim that Indonesian political parties are legally equivalent to private government contractors. Rosenbloom and Piotrowski examine the implications of outsourcing governmental work and the application of constitutional and administrative-law norms to private entities performing public functions.

³² David H. Rosenbloom and Suzanne J. Piotrowski, "Outsourcing the Constitution and Administrative Law Norms," *The American Review of Public Administration* 35, no. 2 (June 1, 2005): 103–21, doi:10.1177/0275074004272619.

³³ Suimi Fales, "Fungsi Partai Politik Dalam Meningkatkan Partisipasi Politik Ditinjau Dari Hukum Positif," *AL IMARAH: JURNAL PEMERINTAHAN DAN POLITIK ISLAM* 3, no. 2 (December 1, 2018): 199, doi:10.29300/imr.v3i2.2152; Pascal Wilmar Yehezkiel Toloh, "Politik Hukum Penguatan Partai Politik Untuk Mewujudkan Produk Hukum Yang Demokratis," *JAPHTN-HAN* 2, no. 1 (January 31, 2023), doi:10.55292/japhtnhan.v2i1.60; Jimly Asshiddiqie, "Penguatan Dan Penataan Partai Politik Di Masa Depan," *Jurnal Ketatanegaraan* 5, no. 1 (November 2017).

The concept of constitutional outsourcing nevertheless remains analytically relevant if it is employed functionally rather than literally. The purpose of the analogy is not to classify political parties as private contractors, but to identify a phenomenon in which a decision possessing public-law consequences is entrusted to an actor that is not itself a state organ. In the context of PAW, the relevant question is therefore not whether the party is formally public or private, but whether the party exercises a decision-making authority that affects a constitutionally significant public position and, if so, whether the exercise of that authority remains subject to constitutional constraints. The analogy consequently concerns the location and accountability of decision-making power, rather than the formal legal status of the decision-maker.

This functional qualification is particularly important because the parliamentary mandate is not an ordinary organisational position within a political party. Membership of the DPR constitutes membership of a state institution established by the Constitution, and the continuation or termination of that membership directly affects the composition and functioning of representative government. PAW therefore produces consequences beyond the internal organisation of a political party. Once a party initiates the replacement of an elected DPR member, an internal party decision becomes capable of altering the composition of an organ and, indirectly, the representation of voters within that organ. The exercise of party authority consequently crosses the boundary between private organisational autonomy and public consequence.

The distinction between the party's role and its exercise of public power is therefore essential. The recognition of political parties under Article 22E paragraph (3) UUD NRI 1945 establishes their legitimate participation in the electoral process.³⁴ It does not necessarily follow, however, that every power subsequently exercised by a political party concerning an elected representative should be treated as an exclusively internal party matter. The status of the party as an electoral participant establishes the legitimacy of its participation in elections; it does not, without further justification, determine the limits of its authority over a parliamentary mandate after the election has occurred.³⁵

This distinction reveals a potential conceptual transformation in the Court's reasoning. When the status of political parties as election participants is used to justify their authority to initiate PAW, the argument moves from

³⁴ Danmadiyah, Nugraha, and Insiyah, "A Party's Recall Right in the Concept of Democratic Country."

³⁵ Fikri and Akhtar, "Who Owns the Parliamentary Seat? Party Sovereignty, Legislative Recall, and Republican Justice in Indonesia's Democracy."

electoral participation to post-election control. The first concerns the party's constitutionally recognised role in presenting candidates and participating in the electoral competition. The second concerns the power to determine whether an individual who has already obtained a seat in the DPR may continue to exercise that seat. The two functions are institutionally connected, but they are not necessarily constitutionally identical. Treating them as equivalent risks transforming the party's electoral role into a broader claim of authority over the parliamentary mandate.

The problem becomes more pronounced within Indonesia's open-list proportional electoral system.³⁶ The system combines the role of political parties with the electoral significance of individual legislative candidates. The Constitutional Court itself has recognised that the open-list proportional system combines the existence of political parties with individual candidates while maintaining what it describes as the sovereignty of political parties.³⁷ This dual structure means that the legitimacy of a DPR member cannot be explained exclusively through the party's organisational authority. The representative is elected within a party-based electoral framework, but individual electoral support also forms an important component of the representative's democratic legitimacy.

Consequently, when a political party is granted decisive authority to initiate PAW, the issue is not simply whether the party is exercising its organisational autonomy. The more important question is whether the party is exercising a publicly consequential power over an electoral mandate. If the answer is affirmative, the exercise of that power should be evaluated according to constitutional principles governing public authority, including legality, accountability, proportionality, procedural fairness, and protection against arbitrary exercise of power. The fact that the decision originates from an internal party process cannot, by itself, remove its constitutional implications.

This is where the concept of privatization of public power becomes analytically relevant. Privatization does not necessarily mean the complete transfer of a governmental function to a private actor. In a broader sense, it may also describe a situation in which the exercise of a public function is determined by an actor whose institutional accountability differs from that of a state organ.

³⁶ Baihaki Sulaiman and Yoyoh Rohaniah, "Analisis Pemilu Dengan Sistem Proporsional Terbuka," *PETANDA: Jurnal Ilmu Komunikasi Dan Humaniora* 4, no. 2 (October 12, 2023): 88–105, doi:10.32509/petanda.v4i2.3319.

³⁷ Askari Razak, "Sistem Proporsionalitas Terbuka Sebagai Identitas Demokrasi Indonesia: Eksistensi Dan Implikasi," *Rechtsregel: Jurnal Ilmu Hukum* 6, no. 1 (August 31, 2023): 83–96, doi:10.32493/rjih.v6i1.35252.

PAW can be understood through this narrower functional conception. The state retains the formal legal framework governing PAW, while the political party acquires influence over whether an individual continues to occupy a constitutionally established representative position. The resulting arrangement does not eliminate public regulation; rather, it relocates a significant part of the decision-making power within the internal institutional sphere of the political party.

This distinction also explains why the analogy to constitutional outsourcing should not be overstated. The argument does not claim that PAW is literally an instance of outsourcing in the administrative-law sense developed by Rosenbloom and Piotrowski.³⁸ Their framework concerns the transfer of governmental work to private contractors and the consequent difficulty of applying constitutional and administrative-law constraints to those actors. The Indonesian PAW context is materially different because political parties are embedded within the electoral system. The analogy is therefore heuristic and functional, not categorical. Its value lies in drawing attention to the consequences of allowing a non-state institutional actor to exercise decisive authority over a matter that affects the functioning of a representative institution.

The functional analogy nevertheless exposes an accountability problem. When the decision to terminate a representative's mandate is primarily initiated through an internal party mechanism, the individual voters who participated in the election may have limited capacity to contest or influence that decision. The party may therefore exercise authority that affects the representation of voters without being directly accountable to those voters in the same manner as an elected representative.³⁹ This creates an asymmetry in the structure of representation: the representative obtains electoral legitimacy through a process involving citizens, while the continuation of the representative's mandate may subsequently depend substantially upon an internal decision of the political organisation.

The resulting asymmetry is particularly important under the principle of popular sovereignty. Article 1 paragraph (2) of UUD NRI 1945 provides that sovereignty is vested in the people and is exercised according to the

³⁸ Rosenbloom and Piotrowski, "Outsourcing the Constitution and Administrative Law Norms."

³⁹ Iswan, "Kewenangan Partai Politik Terhadap PAW Anggota DPR RI Hubungannya Dengan Sistem Proporsional Terbuka Dalam Penyelenggaraan Pemilu."

Constitution.⁴⁰ The legitimacy of PAW must therefore be assessed not only through the position of political parties but also through the relationship between the representative and the electorate.⁴¹ If the parliamentary mandate is treated predominantly as an extension of party authority, the electorate's role risks becoming concentrated at the moment of election, while the party retains substantial control over the representative's subsequent tenure. Such an arrangement may weaken the continuing dimension of electoral accountability.

The concept of public-power privatization therefore helps reveal a doctrinal issue that is obscured when PAW is viewed exclusively as an internal mechanism of party discipline. Party discipline undoubtedly serves legitimate purposes.⁴² Political parties require organisational cohesion to participate in representative government, and elected representatives cannot be completely detached from the political organisations through which they enter electoral competition. Yet organisational legitimacy does not automatically establish unlimited authority over a public representative mandate. The question is whether the party's authority is appropriately balanced against the public character of the office and the electoral legitimacy underlying it.

Accordingly, the concept of constitutional outsourcing should be understood in this article as a diagnostic framework rather than a direct doctrinal transplantation. It identifies the consequences of allowing an institutionally non-state actor to exercise a function with substantial public-law effects. The framework is useful precisely because political parties occupy an intermediate position: they are neither ordinary state organs nor ordinary private associations. Their constitutionally recognised role in elections gives them legitimate authority, but that legitimacy does not necessarily immunise the exercise of their powers from scrutiny.

The PAW, as a form of privatization of public power, consequently lies not in the ownership of the parliamentary mandate by the political party, but in the distribution of decision-making authority. A parliamentary seat remains a public position; nevertheless, the decision to terminate an individual's tenure may originate from a party institution. This separation between the public character of the office and the internal character of the initiating decision creates

⁴⁰ Waisol Qoroni and Indien Winarwati, "Kedaulatan Rakyat Dalam Konteks Demokrasi Di Indonesia," *INICIO LEGIS* 2, no. 1 (June 30, 2021): 51–65, doi:10.21107/il.v2i1.11079.

⁴¹ Evendia, "Implikasi Hak Recall Partai Politik Terhadap Sistem Kedaulatan Rakyat."

⁴² Toni Sastra Jaya, "Kedudukan Mahkamah Partai Dalam Penyelesaian Sengketa Internal Partai Politik," *Pamulang Law Review* 5, no. 1 (August 15, 2022): 13, doi:10.32493/palrev.v5i1.23606.

the accountability problem that the existing party-centered PAW framework must address.

In this sense, the concept of constitutional outsourcing strengthens rather than replaces the argument concerning the tension between party sovereignty and popular sovereignty. It demonstrates that the central question is not merely who has the formal legal power to initiate PAW, but whose interests constrain the exercise of that power. Political parties may legitimately exercise authority within the representative system, but when that authority produces direct consequences for established representative mandate, it must remain connected to the broader constitutional principles of popular sovereignty, electoral legitimacy, and vertical accountability. The failure to maintain that connection risks converting a constitutionally recognised institutional role into an effectively unreviewed power over a public mandate.

C. The Illusion of Legal Protection in the MKD and Party Court Mechanisms

The legal protection mechanisms often cited by the Constitutional Court to justify the constitutionality of the PAW, namely, the existence of the MKD and the Party Court, are, in essence, illusory safeguards rather than substantive constitutional protections. In Constitutional Court Decision No. 199/PUU-XXIII/2025, the Court reaffirmed that concerns regarding the dominance of political parties could be mitigated through these internal mechanisms. However, these mechanisms reveal a circular and non-independent form of control that does not touch, in any meaningful way, the will of the electorate as the primary source of political legitimacy.

The MKD is established as a supporting body of the DPR tasked with safeguarding and upholding the honor and dignity of the House. This mandate is codified in Article 121 of Law No. 17 of 2014, which essentially grants the MKD the authority to examine alleged violations of the DPR Members' Code of Ethics.⁴³ However, institutionally, the MKD is an internal organ of the DPR, with its members drawn from the political party factions within the House.⁴⁴ From its inception, the MKD was not designed as an independent body

⁴³ Sekar Anggun Gading Pinilih, "Penguatan Kedudukan Mahkamah Kehormatan Dewan Sebagai Peradilan Etika," *Masalah-Masalah Hukum* 50, no. 3 (July 31, 2021): 244–53, doi:10.14710/mmh.50.3.2021.244-253.

⁴⁴ Al Musyaawi, Maulina, and Rifqi, "Restrukturalisasi Mahkamah Kehormatan Dewan Berbasis Proporsional Dan Independen Di Indonesia: Studi Banding Komisi Etik Indonesia-Amerika."

standing outside political interest relations; rather, it functions as an internal oversight mechanism inherently intertwined with partisan interests.

When the Constitutional Court asserts that the existence of the MKD can prevent arbitrary use of the DPR member PAW by political parties, it overlooks the fact that the MKD operates within the same power circle as the actors with vested interests. Such oversight is inherently circular: the political party proposes the PAW, the DPR, as a party-dominated institution processes it, and the MKD, whose membership is also drawn from party representation, conducts the ethical assessment. There is no clear separation between the entity being overseen and the entity performing the oversight. From the perspective of the checks and balances principle, effective supervision requires institutional independence and separation of powers.⁴⁵ The MKD clearly does not meet these prerequisites.

From this arises the notion of an illusion of legal protection. This illusion is evident in the Party Court mechanism (*Mahkamah Partai*) as regulated under Law No. 2 of 2011. Article 32, paragraph (1) states that “disputes within political parties are resolved internally in accordance with the party’s AD/ART.” Paragraph (2) further stipulates that such resolution is carried out by a Party Court or other body established by the political party.⁴⁶ These provisions explicitly demonstrate that the Party Court is an internal organ of a private organization, created, financed, and controlled by the political party itself. Consequently, the Party Court cannot be positioned as an objective and impartial mechanism of legal protection. In reference to the principle *nemo iudex in causa sua* (no one should be a judge in their own cause), which is a fundamental rule of justice, the Party Court clearly violates this principle because the political party simultaneously acts as both the interested party and the authority adjudicating the dispute. Although the decisions of the Party Court are described as final and binding internally⁴⁷, as provided under Article 32 paragraph (5) of Law No. 2 of 2011, they are never tested against constitutional standards concerning popular sovereignty or the public mandate.

Furthermore, Article 33 of Law No. 2 of 2011 does provide the possibility for party disputes to be brought before the district court if internal mechanisms

⁴⁵ T. Persson, G. Roland, and G. Tabellini, “Separation of Powers and Political Accountability,” *The Quarterly Journal of Economics* 112, no. 4 (November 1, 1997): 1163–1202, doi:10.1162/003355300555457; M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Oxford: Clarendon Press, 1967).

⁴⁶ Sastra Jaya, “Kedudukan Mahkamah Partai Dalam Penyelesaian Sengketa Internal Partai Politik.”

⁴⁷ Jaya.

fail.⁴⁸ However, the jurisdiction of the district courts remains strictly limited to disputes concerning party membership and internal management, not to a substantive review of the revocation of the public mandate. The courts do not assess whether a mid-term dismissal (PAW) violates Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945); they only examine compliance with the party's AD/ART. From the perspective of democratic theory, this situation reflects what Robert A. Dahl terms a polyarchy deficit⁴⁹, a scenario in which formal democratic institutions exist but fail to provide meaningful participation and control for citizens. Voters have no institutional instruments to scrutinize or contest the revocation of their representatives' mandate. The will of the electorate, as expressed through the vote in general elections, is never considered in the PAW process. Neither the MKD nor the Party Court possesses the authority or the mandate to determine whether the PAW aligns with or contravenes the aspirations of the constituents.

The absence of any review of the voters' will underscores the reduction of popular sovereignty to merely an initial form of legitimacy. In fact, Article 1, paragraph (2) of the UUD NRI 1945 does not distinguish between pre-election and post-election sovereignty. Popular sovereignty is an inherent and continuous principle. It should not cease after elections but should persist in the ongoing relationship between representatives and the represented. Yet, the prevailing PAW mechanism effectively severs this relationship, replacing it with a hierarchical relation between members of the DPR and political parties.

In Constitutional Court Decision No. 199/PUU-XXIII/2025, the Court asserted that if voters consider their representative unfit, corrective action can only be taken in the subsequent election. This reasoning reflects a minimalist conception of democracy in the Schumpeterian sense⁵⁰, which reduces democracy to mere competition for votes. However, within constitutional democracy, this minimalist approach has long been criticized for neglecting the dimensions of accountability and continuous citizen participation. By adopting this minimalist logic, the Constitutional Court indirectly legitimizes the exclusion of citizens from the political corrective process during the representative's term. The illusion of legal protection becomes even more apparent when PAW are based on violations of a party's statutes and bylaws, as stipulated in Article 16, paragraph (1), letter d of Law No. 2 of 2011. Violations

⁴⁸ Jaya.

⁴⁹ Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven: Yale University Press, 1971).

⁵⁰ Joseph A. Schumpeter, *Capitalism, Socialism and Democracy, Capitalism, Socialism and Democracy*, 2010, doi:10.4324/9780203857090.

of private organizational norms are used as grounds for revoking a public office, yet there exists no mechanism to assess whether such violations are relevant to public interest or the will of the electorate. Legitimate representation requires responsiveness to those represented⁵¹; however, under Indonesia's PAW regime, such responsiveness is diverted from the people to the political party.

Thus, the existence of the MKD and the Party Court as mechanisms to oversee PAW does not provide substantive legal protection for the principle of popular sovereignty. The oversight that exists is circular, operating within the party's own sphere, non-independent, as it is inseparable from political interests, and limited, since it examines only compliance with internal party norms rather than the will of the electorate. Moreover, the absence of review regarding the popular mandate renders these mechanisms mere procedural legitimacies to maintain party dominance. In this configuration, Constitutional Court Decision No. 199/PUU-XXIII/2025 fails to strengthen constitutional protection. Citizens remain formally recognized as holders of sovereignty, yet their sovereignty lacks any protective mechanism when their mandate is revoked by a political organization. Representative democracy is thus transformed into a procedural democracy controlled by parties, while the people are reduced to passive spectators of a political process that should be exercised on their behalf.

Weakening of Popular Accountability, Delegitimization of Candidates' Votes, and the Post-Decision Crisis of Representation

The implications of party-initiated PAW become most apparent when examined from the perspective of popular accountability. The difficulty is not that political parties participate in determining the composition of the DPR. Political parties are constitutionally recognised participants in legislative elections and necessarily perform an important representative function. The difficulty arises when that role is translated into a power to terminate an elected representative's parliamentary mandate without accounting for the electoral relationship between the representative and the voters.⁵²

Under Article 1, paragraph (2) of UUD NRI 1945, sovereignty is vested in the people and exercised according to the Constitution. This principle applies to the electoral act through which citizens determine their representatives. PAW

⁵¹ Fenichel Pitkin, *The Concept of Representation*.

⁵² Fikri and Akhtar, "Who Owns the Parliamentary Seat? Party Sovereignty, Legislative Recall, and Republican Justice in Indonesia's Democracy."

consequently cannot be treated exclusively as an internal mechanism of party organisation. Although the decision may originate within a political party, its consequence is public and constitutional: an individual who has obtained a seat through an electoral process is removed from a representative institution and replaced by another individual.⁵³

The problem is therefore one of vertical accountability. Under a constitutional democracy, vertical accountability refers to the relationship of responsibility that elected representatives owe to the voters as the holders of sovereignty.⁵⁴ An elected member of the DPR is situated simultaneously within two institutional relationships. Horizontally, the member remains connected to the political party through which the candidacy was organised and through which the electoral competition was contested.⁵⁵ Vertically, however, the member is connected to the electorate whose votes produced the electoral result.⁵⁶ A balanced PAW regime must therefore accommodate both relationships. The difficulty with an unrestricted party-centred model is that the horizontal relationship may become determinative of the representative's tenure. In contrast, the vertical relationship with voters becomes substantially weaker after the election.

This concern becomes particularly relevant in an open-list proportional electoral system. Individual candidates compete for electoral support and may obtain parliamentary seats on the basis of the votes they individually receive.⁵⁷ The vote is therefore not merely an expression of support for a party in the abstract; it also contributes directly to determining which candidate occupies

⁵³ Muhamad Aljebra Aliksan Rauf, Marten Bunga, and Hardianto Djanggih, "Hak Recall Partai Politik Terhadap Status Keanggotaan Dewan Perwakilan Rakyat Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 7, no. 4 (December 31, 2018): 443, doi:10.24843/JMHU.2018.v07.i04.p03.

⁵⁴ John Dunn, "Situating Democratic Political Accountability," in *Democracy, Accountability, and Representation* (Cambridge: Cambridge University Press, 1999), 329–44, doi:10.1017/CBO9781139175104.012.

⁵⁵ Iswan, "Kewenangan Partai Politik Terhadap PAW Anggota DPR RI Hubungannya Dengan Sistem Proporsional Terbuka Dalam Penyelenggaraan Pemilu."

⁵⁶ Brandice Canes-Wrone, David W. Brady, and John F. Cogan, "Out of Step, Out of Office: Electoral Accountability and House Members' Voting," *American Political Science Review* 96, no. 1 (March 3, 2002): 127–40, doi:10.1017/S0003055402004276.

⁵⁷ Jurdi, Teteng, and Lukita, "Analisis Terhadap Sistem Pemilu Indonesia: Dari Proporsional Tertutup Ke Proporsional Terbuka."

the parliamentary seat.⁵⁸ The replacement of the candidate had an impact on the political party's internal affairs and influenced the voter preferences previously expressed by the public.

For this reason, party-initiated PAW may produce what can be described as the delegitimisation of candidates' votes.⁵⁹ This does not mean that the votes disappear or that the election result is invalidated. Rather, the concern is functional: the democratic significance of votes that contributed to the election of a particular individual may be displaced by a subsequent decision made within the political party. The electorate determines who obtains the mandate at the electoral stage, but may have little or no role in determining whether that mandate continues at the post-electoral stage.⁶⁰

The tension is therefore not between elections and PAW as such. PAW may be necessary to ensure continuity and to address circumstances in which an elected representative can no longer legitimately perform the functions of office. The tension concerns who should possess decisive authority to determine when the electoral mandate has ceased to be sustainable. If that determination is placed predominantly within the political party, the mechanism risks transforming the electoral mandate into an instrument whose continuation depends principally upon party approval.

Such a model may also generate a post-decision crisis of representation. Once a representative has been removed through a party-initiated mechanism, the individual who subsequently occupies the seat may possess authority to serve but may not necessarily reproduce the same electoral relationship between the original representative and the electorate. The continuity of the seat is therefore distinguishable from the democratic continuity of the mandate.⁶¹ The former concerns the continued existence of the parliamentary seat; the latter concerns the preservation of the representative relationship established through the electoral process.

This distinction is important for evaluating the adequacy of PAW. A mechanism that ensures that every vacant parliamentary seat is promptly filled

⁵⁸ Fredick Broven Ekayanta, "Kesindebungan Sistem Proporsional Terbuka Sebagai Sistem Pemilihan Legislatif Di Indonesia," *Politika: Jurnal Ilmu Politik* 15, no. 2 (November 30, 2024): 201–17, doi:10.14710/politika.15.2.2024.201-2017.

⁵⁹ Iswan, "Kewenangan Partai Politik Terhadap PAW Anggota DPR RI Hubungannya Dengan Sistem Proporsional Terbuka Dalam Penyelenggaraan Pemilu."

⁶⁰ Hufon et al., "The Power to Remove: A Comparative Inquiry Into Recall Mechanisms in Indonesia and The Philippines."

⁶¹ Fikri and Akhtar, "Who Owns the Parliamentary Seat? Party Sovereignty, Legislative Recall, and Republican Justice in Indonesia's Democracy."

may satisfy a requirement of continuity, but institutional continuity alone does not resolve the question of democratic legitimacy. A system must also consider whether the replacement mechanism adequately preserves the relationship between the electorate and the representative institution. Otherwise, PAW may solve the problem of institutional vacancy while simultaneously creating a problem of representational legitimacy.

This does not mean that party statutes or AD/ART should be irrelevant. On the contrary, they may provide legitimate standards of party discipline.⁶² The difficulty arises where compliance with internal party rules becomes sufficient, without further constitutional scrutiny, to justify the termination of an elected mandate. Internal party autonomy should therefore operate within constitutional boundaries when its exercise produces direct consequences for a public representative office.

The appropriate response is consequently not to eliminate the role of political parties in PAW, but to constitutionalise the limits of that role. Political parties should retain the authority to initiate PAW where objectively verifiable circumstances demonstrate that continuation in office is incompatible with the representative's legal or constitutional obligations. However, the party's decision should not itself be treated as conclusive. It should constitute the initiation of a constitutionally regulated process rather than the final determination of the representative's loss of mandate.

The foregoing analysis suggests that the difficulty identified in the Constitutional Court Decision No. 199/PUU-XXIII/2025 cannot be addressed merely by affirming or rejecting party-initiated PAW in categorical terms. A more sustainable approach would be to develop a conditional doctrine of PAW. Under such an approach, political parties would retain a legitimate role in initiating the replacement of their members, but that authority would be conditioned upon objective grounds, procedural safeguards, and mechanisms capable of protecting the constitutional interests of voters.

The first element of such a doctrine should be the requirement of objective and legally ascertainable grounds for an interim termination of an electoral mandate (PAW). Party-initiated recall should not be permitted merely on the basis that a political party considers an elected member to have lost its political confidence, departed from the party's preferred political position, or failed to comply with an internal political preference. Rather, the grounds for PAW must

⁶² Aldi Sajian, RR Cahyowati, and Gatot Dwi Hendro Wibowo, "Kedudukan AD/ART Partai Politik Dalam Rangka Mewujudkan Demokrasi Di Indonesia," *Jurnal Ilmiah Muqoddimah: Jurnal Ilmu Sosial, Politik, Dan Humaniora* 7, no. 2 (August 3, 2023): 337, doi:10.31604/jim.v7i2.2023.1-7.

be anchored in objectively identifiable circumstances and subject to clear legal standards, thereby preventing the electoral mandate conferred by voters from being reduced to an instrument of unrestricted party control.⁶³ This principle is reflected, albeit within the existing statutory framework, in Article 239 paragraphs (1) and (2) of Law Number 17 of 2014, which provides that a member of the DPR may cease to hold office before the expiration of the term due to death, resignation, or dismissal, while further specifying the circumstances that may justify dismissal, including continuous inability to perform parliamentary duties for three consecutive months without explanation, violation of the oath of office or the DPR Code of Ethics, conviction by a court decision having permanent legal force for a criminal offense punishable by imprisonment of five years or more, proposal for dismissal by the member's political party in accordance with statutory provisions, loss of eligibility requirements for membership of the DPR, violation of statutory prohibitions, dismissal from membership of the political party in accordance with applicable law, or membership in another political party. Although Article 239 paragraph (2) letter d Law Number 17 of 2014 expressly recognizes a proposal for dismissal by a political party as one of the grounds for PAW⁶⁴, such authority must nevertheless be interpreted within the broader constitutional framework governing representative democracy, popular sovereignty, and the protection of the electoral mandate. Accordingly, political disagreement, dissent from party leadership, divergence from the party's policy preferences, or failure to conform to an internal political position should not, without an objectively verifiable and legally established basis, constitute sufficient grounds for terminating an elected representative's mandate.

Second, the decision to initiate PAW should be subject to independent and judicially reviewable procedures. Internal party procedures should remain relevant, but a party decision should not become determinative solely by virtue of its adoption through an internal organisational mechanism. Where an internal party body determines that a member should be recalled, the affected representative should have access to a mechanism through which the legality and validity of the decision may be examined.

Such review should not transform the judiciary into a political decision-maker or require courts to determine whether a representative remains desirable

⁶³ Muhammad Irfan Hilmy and Trian Marfiansyah, "Recall Referendum Sebagai Alternatif Proses Penggantian Antarwaktu Lembaga Legislatif Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 1 (2021), doi:10.24090/volksgeist.v4i1.4515.

⁶⁴ Danmadiyah, Nugraha, and Insiyah, "A Party's Recall Right in the Concept of Democratic Country."

to a party. Judicial review should instead be directed toward identifiable legal questions: whether the statutory grounds for PAW exist; whether the party followed its own legally applicable procedures; whether the alleged violation is objectively established; whether the decision was taken by the competent party organ; whether the representative was afforded a meaningful opportunity to respond; and whether the decision is compatible with constitutional rights and principles.

This model would preserve party autonomy while preventing the internalisation of a public decision. The party would retain its role as the initiating political institution, but the final legal effect of the decision would depend upon compliance with constitutional and statutory requirements. PAW would cease to operate as an essentially unilateral party power and instead become a constitutionally conditioned public-law process.

Third, the affected representative should be provided with procedural due process within the party and before the competent reviewing institution. At minimum, the representative should receive notice of the grounds for proposed PAW, access to the material relied upon, an opportunity to present a defence, and a reasoned decision from the competent party body. These safeguards are particularly important because the consequences of PAW extend beyond party membership⁶⁵: they affect the individual's legal status as a member of the DPR and the representation of voters. Procedural safeguards are also necessary to distinguish genuine violations from politically motivated recall. Without an obligation to provide reasons, a party may characterise political disagreement, criticism of party leadership, or legislative independence as organisational disobedience. A reasoned decision would require the party to identify the precise rule allegedly violated and demonstrate the connection between that violation and the statutory ground for PAW. This would strengthen the accountability of the mechanism without eliminating the party's role.

Fourth, the model should provide for a limited mechanism of constituent notification and objection. The inclusion of voters need not necessarily take the form of a full constituent-initiated recall election. Such a requirement could create practical difficulties and, as the Constitutional Court has recognised in its jurisprudence, could raise questions concerning voting secrecy and the institutional design of representative elections. The alternative may therefore be more modest: once PAW is initiated, the electorate within the relevant electoral district should be formally informed of the proposed replacement and provided

⁶⁵ Aliksan Rauf, Bunga, and Djanggih, "Hak Recall Partai Politik Terhadap Status Keanggotaan Dewan Perwakilan Rakyat Dalam Sistem Ketatanegaraan Indonesia."

with a limited opportunity to submit objections concerning the factual or procedural basis of the recall. Such a mechanism would not transfer the recall power from political parties to voters. Instead, it would introduce a vertical accountability safeguard into a fundamentally party-initiated process. Its purpose would be to ensure that the electorate is not entirely excluded from a decision that directly alters the representative relationship established through the election. The objection mechanism could be confined to factual, procedural, or legality-based objections rather than allowing voters to substitute their political preferences for those of the party.

The advantage of this model is that it does not require a false choice between party sovereignty and popular sovereignty. As clarified earlier, “party sovereignty” is an analytical construct used in this article rather than a doctrine expressly recognised by the Court. The objective should therefore not be to replace one supposed form of sovereignty with another. It should be to establish an arrangement in which the legitimate authority of political parties is reconciled with the constitutional principle that sovereignty resides in the people.

Such an approach would also respond directly to the methodological weakness identified in the Constitutional Court's reasoning. Rather than asking whether party-initiated PAW is constitutionally permissible in the abstract, the Constitutional Court could adopt a conditional interpretation under which Article 22E paragraph (3) UUD NRI 1945, read together with Article 1 paragraph (2), permits political parties to initiate PAW only within constitutionally defined limits. This would preserve the Constitutional Court's earlier recognition of the constitutional importance of political parties while preventing Article 22E paragraph (3) UUD NRI 1945 from being interpreted as an unrestricted basis for party control over parliamentary mandates.

Most importantly, such a model would restore a measure of vertical accountability without undermining the role of political parties. The party would continue to function as an essential institution of representative democracy, but its authority would no longer be sufficient by itself to determine the continuation of a public mandate. The electorate would remain relevant beyond the moment of voting, either through notification and objection mechanisms or, where constitutionally and institutionally appropriate, through a renewed electoral process.

The proposed doctrine therefore reframes PAW from an issue of party control over representatives into an issue of constitutionally conditioned accountability over representative mandates. This shift is significant because it changes the normative question from “whether the party has the authority to

recall” to “under what conditions may the party exercise that authority.” The latter question provides a more balanced framework for reconciling party discipline, representative independence, and popular sovereignty.

Conclusion

Constitutional Court Decision No. 199/PUU-XXIII/2025 affirms a constitutional trajectory that is formally consistent with prior jurisprudence, yet substantively problematic for the principle of popular sovereignty within Indonesia’s representative democracy. The Constitutional Court chose to uphold the legal construction of PAW as a political party right, relying on its interpretation of Article 22E(3) of the UUD NRI 1945, without reconsidering developments in the open proportional electoral system and the personalization of political mandates. Consequently, the constitutional relationship between the people, political parties, and parliamentary representatives is structured hierarchically, with parties positioned as the ultimate authority over the continuity of DPR mandates. This construction generates a series of serious implications. First, the principle of vertical accountability to the people is weakened, as DPR members are more accountable to their parties than to their constituents. Second, individual voters’ personal votes are delegitimized, as the continuity of elected representatives’ mandates may be revoked by internal party decisions derived from AD/ART, which are private norms lacking constitutional legitimacy equivalent to the popular will. Third, Indonesian democracy trends toward an electoral democracy lacking substantive representation, where elections serve merely as initial legitimization while day-to-day representation is controlled by internal political party mechanisms. Furthermore, the legal protection mechanisms claimed by the Constitution, through the MKD and Party Court, prove illusory, operating within circular, non-independent controls and never assessing the voters’ will as the primary source of mandate. PAW has thus transformed into a form of privatization of public power and constitutional outsourcing to political parties. Accordingly, Constitutional Court Decision No. 199/PUU-XXIII/2025 entrenches a paradigm of party-centered democracy that gradually erodes popular sovereignty as a living constitutional principle.

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Democracy is based on the principle of majority rule, but it also protects the rights of minorities.

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