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THE CONSTITUTIONAL PARADOX IN THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA: A LEGAL-PHILOSOPHICAL ANALYSIS OF CITIZENS’ POLITICAL RIGHTS AND REPRESENTATION THROUGH POLITICAL PARTIES

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ABSTRACT

Indonesia’s constitutional order recognizes political participation through provisions on popular sovereignty, equality in government, freedom of association and expression, and electoral representation. At the same time, the exercise of the right to stand for particular public offices is subject to constitutional and statutory nomination mechanisms, especially those involving political parties. This study examines the resulting tension between citizens’ political rights and institutionalized political representation from a legal-philosophical perspective. It employs normative legal research using statutory, conceptual, and philosophical approaches. Primary legal materials comprise the 1945 Constitution, legislation governing political parties and elections, and relevant Constitutional Court decisions; secondary materials include constitutional theory, legal philosophy, and recent scholarship on democratic participation. The analysis shows that political rights should be distinguished from the legal conditions governing their exercise: citizens are the bearers of political rights, whereas political parties and electoral institutions are legally constituted mechanisms for organizing representation. The study therefore proposes the concept of the Constitutional Political Rights Paradox to describe the tension that arises when institutional mechanisms intended to facilitate representation become conditions that substantially determine access to political office. The article concludes that constitutional representation should preserve the primacy of citizens as rights-holders while maintaining legitimate institutional requirements for electoral organization. This reconstruction clarifies the relationship between political rights, political parties, and popular sovereignty without treating political-party nomination requirements as extinguishing the underlying constitutional entitlement.

Keywords: constitutional political rights, constitutionalism, legal philosophy, political parties, representative democracy

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INTRODUCTION

Constitutional democracy combines popular sovereignty with legal constraints on public power. A constitution therefore performs a dual function: it legitimizes the organization of government while protecting citizens against arbitrary exercises of power. Contemporary constitutional scholarship treats democratic legitimacy and constitutional limitation as mutually related rather than as separate principles (Gibbs, 2024; Greally, 2024). In Indonesia, this relationship is expressed in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945), which provides that sovereignty is vested in the people and exercised according to the Constitution, and Article 1 paragraph (3), which establishes Indonesia as a state based on law.

The principle of popular sovereignty has direct implications for political participation. Article 27 paragraph (1) guarantees equality before the law and in government, while Article 28D paragraph (3) guarantees every citizen an equal opportunity in government. Article 28E paragraph (3) protects freedom of association, assembly, and expression. These provisions form an interconnected constitutional basis for political participation, although they do not make every form of public-office candidacy unconditional. The constitutional position of political rights must therefore be distinguished from the statutory and institutional conditions through which those rights are exercised.

Political rights have both an individual and a public dimension. Individually, they protect citizens as bearers of political liberty and equal status. Publicly, they provide a basis for the legitimacy and accountability of government (Landau et al., 2024; United Nations Human Rights Committee, 1996). Natural-rights theory, rights-based constitutionalism, and contemporary constitutional-rights theory provide different philosophical explanations for this relationship. Locke places individual rights prior to governmental authority; Dworkin emphasizes the constraining force of rights against governmental interests; and Alexy understands constitutional rights as principles requiring practical realization within a constitutional order (Locke, 1988, 2021; Dworkin, 1977, 2011; Alexy, 2002, 2003).

In Indonesia, however, political representation is substantially institutionalized. Political parties have a legally recognized recruitment function, and the Constitution itself requires political-party or coalition nomination for presidential and vice-presidential candidates under Article 6A paragraph (2). Legislative candidacy is likewise organized through political parties. Regional-head elections are more differentiated because the legal framework also recognizes independent candidacy subject to public-support and verification requirements. This differentiated legal architecture means that the relationship between political rights and political parties cannot accurately be described as a universal rule that all political participation must pass through parties.

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The central problem of this study is therefore not whether political parties are constitutionally legitimate institutions, but whether institutional mechanisms may become so determinative that the underlying position of citizens as political-rights holders is conceptually displaced. The study asks three related questions: first, how should political rights be understood as constitutional rights of citizens; second, how does institutionalized nomination through political parties affect the exercise of those rights; and third, what legal-philosophical relationship should be maintained among citizens, political parties, and popular sovereignty?

The study contributes the concept of the Constitutional Political Rights Paradox. The concept refers to a tension that arises when a constitutional right is held by citizens as rights-bearers, while its exercise in a particular institutional setting is conditioned by organizational mechanisms that may determine access to political office. The concept does not mean that every nomination requirement is unconstitutional. Rather, it provides an analytical test for asking whether institutional requirements remain instruments for realizing political rights or become substantive barriers that displace the primacy of citizens as rights-holders.

Previous scholarship has examined political-party functions, electoral systems, deliberative democracy, constitutional rights, and the role of institutions in democratic legitimacy (Dixon, 2024; Lafont, 2023; Bellamy & King, 2025). The distinctive focus of this study is the ontological relationship between the bearer of a political right and the institution that organizes its exercise. The analysis consequently shifts from asking only how institutions operate to asking what institutional legitimacy derives from the constitutional status of citizens themselves.

METHODS

This study uses normative legal research to examine the relationship between citizens’ political rights and institutionalized political representation. The research is doctrinal and philosophical rather than empirical: it interprets authoritative legal texts and legal-philosophical scholarship to construct a normative argument concerning the position of rights-holders and representative institutions.

The research applies three approaches. First, the statutory approach examines the 1945 Constitution, the legislation governing political parties and elections, and the legal framework for regional-head elections. Second, the conceptual approach analyzes constitutional rights, political rights, popular sovereignty, political representation, institutionalization, and the distinction between rights and conditions for exercising rights. Third, the philosophical approach examines the ontological, epistemological, and axiological dimensions of the relationship between citizens and political institutions.

Primary legal materials were selected because they directly regulate or authoritatively interpret political participation, political-party nomination, electoral candidacy, and

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constitutional rights. The materials include the 1945 Constitution; Law No. 2 of 2008 on Political Parties as amended by Law No. 2 of 2011; Law No. 7 of 2017 on General Elections and its subsequent amendments; the legislation governing regional-head elections; and relevant Constitutional Court decisions, including Decision No. 62/PUU-XXII/2024 concerning the presidential nomination threshold. Secondary materials were selected on the basis of direct relevance to constitutional democracy, political rights, representation, and legal philosophy, with priority given to recent peer-reviewed scholarship and established theoretical works.

The legal materials were analyzed through qualitative legal reasoning, constitutional interpretation, hermeneutical analysis, and argumentative analysis. The analysis proceeded in four stages: identification of the constitutional norm; identification of the institutional mechanism that operationalizes the norm; comparison of the mechanism with rights-based and democratic theories; and formulation of the normative implications for the relationship between citizens and representative institutions. The central analytical distinction is between the existence of a political right and the legal conditions under which that right may be exercised in a particular electoral context.

RESULTS AND DISCUSSION

3.1 Constitutional Structure of Political Rights under the 1945 Constitution

The constitutional structure of political rights begins with Article 1 paragraph (2) of the 1945 Constitution, which locates sovereignty in the people. In legal-philosophical terms, this establishes citizens as the normative source of democratic legitimacy. Article 27 paragraph (1) and Article 28D paragraph (3) then connect popular sovereignty with equality in law and government. Political participation is therefore not merely an administrative opportunity but part of the constitutional relationship between citizens and public power.

The constitutional framework also protects the conditions through which political participation can be organized. Article 28E paragraph (3) protects association, assembly, and expression, while Article 28I paragraph (4) places responsibility for the protection, promotion, enforcement, and fulfillment of human rights on the state. These provisions support a rights-based understanding in which political institutions are instruments for organizing participation rather than independent sources of citizens' rights.

From this perspective, the term “ontological political rights” requires a precise limitation. It does not mean that a person possesses an unlimited legal entitlement to occupy any public office regardless of eligibility rules. It means that the citizen is the bearer of the political interest and constitutional entitlement to participate in public affairs, while the legal system may prescribe institutional conditions for a particular form of participation. This distinction prevents the philosophical claim of inherent rights from being confused with an assertion of unconditional eligibility.

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The relationship among the source, recognition, exercise, and institutional organization of political rights can be summarized in Table 1.

Table 1. Analytical structure of constitutional political rights. Source: Author’s analysis.

Dimension	Nature	Primary subject	Function
Political rights	Rights held by citizens	Citizens	Basis of democratic participation
Constitutional recognition	Normative recognition and protection	Constitution	Provides constitutional legitimacy
Operational exercise	Participation through voting, expression, association, candidacy, and representation	Citizens	Realizes political participation
State obligation	Protection, promotion, enforcement, and fulfillment	State institutions	Guarantees effective exercise
Political institutions	Legally constituted mechanisms of representation	Political parties, election institutions, parliament	Organize representation rather than originate citizens’ rights

3.2 Institutionalization of Political Rights through Political Parties

Political parties occupy an important but legally differentiated position in Indonesia’s constitutional order. The Political Parties Law recognizes political recruitment as one of the functions of political parties (Law No. 2 of 2008, art. 11(1)(e), as amended by Law No. 2 of 2011). For legislative elections, candidate nomination is organized through political parties. For presidential elections, Article 6A paragraph (2) of the 1945 Constitution expressly provides that presidential and vice-presidential candidates are nominated by a political party or coalition of political parties participating in the election.

The legal position is more complex for regional-head elections because the statutory framework recognizes both party-based and independent candidacy. Independent candidates must satisfy statutory public-support requirements and undergo administrative and factual verification. Consequently, political-party mediation is a major

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mechanism of political representation, but it is not a universal institutional gateway for every public office.

The Constitutional Court’s recent jurisprudence further illustrates the distinction between party nomination and citizens’ political rights. In Decision No. 62/PUU-XXII/2024, the Court declared the presidential nomination threshold in Article 222 of Law No. 7 of 2017 unconstitutional and emphasized the need to preserve meaningful electoral choice. At the same time, Article 6A paragraph (2) of the Constitution continues to establish political parties or coalitions as the constitutional nominating mechanism for presidential and vice-presidential candidates. The current framework therefore demonstrates that party nomination remains constitutionally significant, while additional statutory barriers to nomination may be subject to constitutional review (Mahkamah Konstitusi Republik Indonesia, 2025).

This distinction is important for the concept developed in this study. The constitutional paradox does not arise simply because political parties participate in candidate selection. It arises when an institution that has been constitutionally or statutorily empowered to organize representation is treated as if it were the source of the citizen’s political right itself. The normative task is therefore to preserve the difference between institutional authority and the underlying status of citizens as rights-holders.

3.3 The Constitutional Political Rights Paradox: Rights and Institutions

The analysis reveals a tension between two levels of the constitutional order. At the first level, political rights belong to citizens as constitutional subjects. At the second level, their exercise is organized through institutions that possess legally defined powers of recruitment, nomination, administration, and representation. The tension becomes significant when the second level is allowed to determine the substantive availability of the first.

The distinction can be presented as a comparison between rights-based and institution-based dimensions of political participation. Table 2 presents the analytical distinction between citizens’ political rights and institutional authority. This is a conceptual matrix developed from the normative analysis rather than a claim that the two categories are legally identical.

Habermas provides a useful procedural perspective because democratic legitimacy depends on inclusive participation and communicative freedom. Rawls emphasizes the equal value of political liberties, while Dworkin emphasizes the priority of rights against governmental interests. Alexy contributes a framework for understanding constitutional rights as principles that require practical realization through proportionality and institutional balancing (Habermas, 1996; Rawls, 1999; Dworkin, 1977; Alexy, 2002). These approaches converge on the proposition that democratic institutions require justification by reference to the rights and participation of citizens.

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Table 2. Rights-based and institution-based dimensions of political participation.

Source: Author’s analysis.

Citizens’ political rights	Institutional authority
Held by citizens as rights-bearers	Conferred by constitutional or statutory law
Grounded in equality and popular sovereignty	Grounded in institutional competence
Universal at the level of rights-bearing	Conditioned by legal eligibility and institutional procedures
Constitutional in character	Administrative, organizational, or representative in function
Must be protected in substance	Must remain subject to constitutional limits and accountability

The present analysis adds a distinct ontological dimension: institutions should be understood as derivative mechanisms whose legitimacy depends on their relationship to the citizens whose political participation they organize. This does not negate the institutional role of political parties. Rather, it supplies a criterion for evaluating institutional design: the exercise of institutional authority should facilitate, and not conceptually replace, citizens’ status as political-rights holders.

The distinction also clarifies an important qualification in the original formulation of the paradox. The right to vote is not made contingent on a citizen’s selection by a political party. Likewise, the right to seek public office cannot be equated with an unconditional entitlement to candidacy outside the legal framework. The more precise proposition is that citizens possess constitutional political rights, while the legal system specifies different conditions for exercising particular dimensions of those rights. The paradox emerges when those conditions become disproportionate or structurally exclusionary, thereby transforming an organizational mechanism into a determinant of substantive political access.

3.4 Legal-Philosophical Reconstruction: Primacy of Rights, Instrumentality of Institutions

Three strands of the analysis can be synthesized. First, constitutional political rights are grounded in the status of citizens as participants in popular sovereignty. Second, political institutions derive their authority from constitutional and statutory norms and therefore operate within a constituted legal sphere. Third, democratic legitimacy requires institutions to remain oriented toward meaningful political participation rather than merely reproducing institutional control.

Earlier work by Wulakada has examined the philosophical approach to legal research and the relationship between political-party hegemony and representative

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elections (Wulakada, 2025; Wulakada et al., 2024a). The present study develops that line of inquiry by translating the institutional problem into a more general legal-philosophical proposition: the legitimacy of representative institutions depends not only on formal legality but also on whether their operation preserves citizens’ constitutional status as rights-holders.

The resulting proposition may be formulated as follows: political rights belong to citizens as the subjects of constitutional democracy; the state must secure the conditions for their meaningful exercise; and political parties function as constitutionally and statutorily recognized instruments of representation and recruitment. Institutional nomination requirements are therefore legitimate only within the boundaries established by the Constitution and the rights they are designed to organize. This proposition defines the Constitutional Political Rights Paradox as a tension between the primacy of rights and the institutional conditions of their exercise, rather than as proof that political parties are inherently incompatible with democracy.

This reconstruction also improves the analytical relationship between popular sovereignty and representation. The people remain the source of democratic legitimacy, while representation is a mechanism through which sovereignty is exercised. Political parties can therefore be indispensable to a particular constitutional design without becoming the ontological source of citizens’ political rights.

CONCLUSION

This study finds that political rights in Indonesia’s constitutional democracy should be understood at two analytically distinct levels. First, citizens are the bearers of constitutional political rights grounded in popular sovereignty, equality, and political participation. Second, the exercise of particular forms of political participation is organized through constitutional and statutory mechanisms, including political-party nomination. The existence of institutional conditions does not by itself extinguish the underlying right; the constitutional question is whether those conditions remain proportionate, legally authorized, and oriented toward meaningful political participation. The analysis therefore supports the Constitutional Political Rights Paradox as a concept for identifying situations in which representative institutions cease to function merely as mechanisms for organizing political participation and instead become determinants of substantive access to political rights. The concept is not a claim that political parties are illegitimate. Rather, it establishes a rights-centered criterion for evaluating their institutional role. Political parties, elections, and representative bodies derive democratic legitimacy from their function in realizing popular sovereignty and facilitating citizens’ political participation.

Accordingly, the relationship among citizens, political parties, and the state should be reconstructed as a relationship between rights-holders and institutional facilitators.

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This approach answers the research questions by affirming the constitutional status of citizens as political-rights holders, recognizing the legitimate institutionalization of representation, and requiring that institutional mechanisms remain subordinate to the constitutional purposes of equality, participation, and popular sovereignty.

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