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Absorptive Backsliding: Coalitional Erosion and Constitutional Resilience in Indonesia, Hungary, and Poland

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ABSTRACT

Comparative scholarship on democratic backsliding has been built largely on two Central European paths: in Hungary a governing party with a two-thirds majority rewrote the constitution, while in Poland a governing party without that majority bypassed it through ordinary statutes. Both accounts assume that supermajority amendment rules and shared appointment powers protect democracy because they hand a veto to an opposition. Indonesia does not fit either path. Since 2014 successive presidents have built governing coalitions that absorb rather than defeat their rivals, reaching roughly four-fifths of the House of Representatives after 2024. Employing a functional comparative method, the article examines the constitutional texts, the principal decisions of the constitutional courts, statutes on courts, elections, and the armed forces, and Venice Commission opinions from 2010 to 2026. It finds that under absorption the text of the constitution is left intact while its protective rules are hollowed out: thresholds count seats rather than contestation, split appointment turns into a power of recall, and the Constitutional Court becomes both an instrument of erosion and the last site of resistance. The Hungarian restoration after 2026 and the stalled Polish restoration after 2023 show that repair inherits the design flaws that enabled the damage. The article proposes a third category, absorptive backsliding, and argues that resilient design in coalitional presidential systems should rely on time rather than numbers: guarantees that operate across elections, that freeze electoral rules before a vote, and that apply changes to judicial tenure only to future appointees.

Keywords: *absorptive backsliding; abusive constitutionalism; constitutional resilience; constitutional restoration; coalitional presidentialism*

JURISDICTIONAL STATEMENT

This article examines Indonesia, Hungary, and Poland. Hungary and Poland are the canonical cases of erosion with and without a constitutional supermajority, and both have now entered restoration under different majorities. Indonesia shares their post-transition courts and supermajority amendment rules but differs in the political mechanism, since its governing coalition absorbs the opposition. The comparison

isolates the political precondition, rather than the textual rule, on which consensus-based safeguards depend.

1. Introduction

Democratic constitutions are usually defended by numbers. A supermajority rule for amendment, a requirement that judges be chosen by several institutions, and a quorum that cannot be met by the government alone all rest on the same premise: that the power to change the constitution should require the consent of someone who does not govern. The premise has been tested most visibly in Central Europe. In Hungary a single party won two-thirds of the seats in 2010 and used that majority to replace the constitution itself.¹ In Poland a party that lacked two-thirds reached a similar outcome by ordinary statutes that disregarded the constitution.² The first path shows what a supermajority can do; the second shows what a determined majority can do without one.

Indonesia offers a third path, and its constitutional significance has been overlooked. Since 2014 Indonesian presidents have governed through coalitions that expand after each election by bringing former rivals into cabinet. After the 2024 elections the parties supporting President Prabowo Subianto held 470 of the 580 seats in the House of Representatives (Dewan Perwakilan Rakyat, DPR), roughly four-fifths, and the only party outside the coalition described itself as a balancing force rather than an opposition.³ Political scientists have described this pattern as party cartelization and coalitional presidentialism.⁴ What remains undertheorized is its consequence for constitutional law. A coalition of this size could meet most of the thresholds that the Indonesian Constitution sets for its own amendment, yet it has not amended the text. It has instead changed the tenure of constitutional judges by statute, recalled a sitting judge, revised the laws on the anti-corruption commission and the armed forces at speed, and benefited from a judicial decision that altered the eligibility rules for the presidency weeks before candidate registration.

This article contends that these episodes are not a weaker version of the Hungarian or Polish experience but a distinct modality of constitutional retrogression, which it calls absorptive backsliding. In Hungary the opposition was defeated; in Poland it was outvoted and ignored; in Indonesia it was absorbed. The difference matters because the main safeguards recommended by the literature on resilient constitutions assume that an opposition exists to use them. A supermajority rule protects only when

¹ Kriszta Kovács and Gábor Attila Tóth, 'Hungary's Constitutional Transformation' (2011) 7 *European Constitutional Law Review* 183.

² Wojciech Sadurski, *Poland's Constitutional Breakdown* (Oxford University Press 2019); Wojciech Sadurski, 'Constitutional Design: Lessons from Poland's Democratic Backsliding' (2020) 6 *Constitutional Studies* 59.

³ Seat shares calculated from the official results of the 2024 legislative elections: Golkar 102, Gerindra 86, NasDem 69, PKB 68, PKS 53, PAN 48 and Demokrat 44, against PDI-P 110. On the coalition, see 'Demokrasi Indonesia dalam Dominasi KIM Plus' [Indonesian Democracy under the Dominance of KIM Plus] *Kompas* (Jakarta, 2024) <<https://www.kompas.id/artikel/en-demokrasi-indonesia-dalam-dominasi-kim-plus>> accessed 18 September 2026.

⁴ Dan Slater, 'Party Cartelization, Indonesian-Style: Presidential Power-Sharing and the Contingency of Democratic Opposition' (2018) 18 *Journal of East Asian Studies* 23; Marcus Mietzner, *The Coalitions Presidents Make: Presidential Power and Its Limits in Democratic Indonesia* (Cornell University Press 2023).

the votes needed to reach it belong to someone with a reason to refuse. A shared appointment power protects only when the appointing institutions answer to different political masters. Under absorption both conditions fail at once, and they fail without any visible breach of the text.

The comparative literature has theorized abusive constitutionalism,⁵ autocratic legalism,⁶ constitutional retrogression,⁷ and executive aggrandizement.⁸ It has also recognized that erosion in Asia rarely proceeds through formal amendment and relies instead on ordinary legislation, informal interpretation, and shifts in political practice.⁹ Indonesian scholarship has documented the country's democratic regression in detail,¹⁰ and one study has compared court packing in Hungary, Poland, and Indonesia.¹¹ Another has proposed opposition rights as a form of constitutional repair.¹² Yet the link between the political mechanism of absorption and the legal design of amendment and appointment rules has not been drawn, and Indonesia has not been read against the restoration now under way in Poland and, since April 2026, in Hungary.

The article therefore asks three questions. First, how does absorptive backsliding differ, in its constitutional mechanics, from erosion by amendment in Hungary and erosion by bypass in Poland? Second, why do consensus-based safeguards such as supermajority thresholds and split judicial appointments fail when the opposition is absorbed rather than defeated? Third, what can the Hungarian and Polish restorations teach a system that has not yet experienced a change of government, about designing resilience before rather than after the damage? The answer advanced here is that resilience in coalitional presidential systems depends less on the height of a threshold than on its timing. A coalition can absorb seats; it cannot so easily absorb an election. The article does not abandon the supermajority model, but qualifies it. It does not reject judicial review as a defense of democracy, but relocates its protection from the composition of the court to the temporal reach of the laws that govern it.

2. Method

The article employs a functional rather than purely formal comparative method. It compares the three systems not by the wording of their amendment clauses, which

⁵ David Landau, 'Abusive Constitutionalism' (2013) 47 UC Davis Law Review 189.

⁶ Kim Lane Scheppele, 'Autocratic Legalism' (2018) 85 University of Chicago Law Review 545.

⁷ Aziz Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy' (2018) 65 UCLA Law Review 78.

⁸ Nancy Bermeo, 'On Democratic Backsliding' (2016) 27(1) Journal of Democracy 5; Tarunabh Khaitan, 'Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism' (2019) 17 International Journal of Constitutional Law 342.

⁹ Dian AH Shah, 'Dismantling Democratic Change in Asia: Modalities and Weapons of Choice' (2024) 22 International Journal of Constitutional Law 997.

¹⁰ Thomas P Power, 'Jokowi's Authoritarian Turn and Indonesia's Democratic Decline' (2018) 54 Bulletin of Indonesian Economic Studies 307; Thomas Power and Eve Warburton (eds), *Democracy in Indonesia: From Stagnation to Regression?* (ISEAS-Yusof Ishak Institute 2020); Marcus Mietzner, 'The Limits of Autocratisation in Indonesia: Power Dispersal and Elite Competition in a Compromised Democracy' (2025) 46 Third World Quarterly 153.

¹¹ Idul Rishan, 'Constitutional Court Regression in Post-Democratic Transition: A Comparison of Court Packing in Hungary, Poland, and Indonesia' (2024) 10 Constitutional Review 451.

¹² Mei Susanto and others, 'Constitutional Repair through Opposition Reform: Designing the Right of the Opposition and Incentive Systems to Counter Democratic Deterioration in Indonesia' (2025) 7 Jambura Law Review 583.

differ considerably, but by the function those clauses were meant to perform: to require the consent of actors outside the governing majority before the constitutional order is changed. The analysis is doctrinal and evaluative. It reconstructs how each safeguard was designed to operate, identifies the political condition on which it depended, and assesses what happened when that condition disappeared.

The primary materials are the Constitution of the Republic of Indonesia 1945 as amended between 1999 and 2002, the Fundamental Law of Hungary 2011 as consolidated to July 2026, and the Constitution of the Republic of Poland 1997. For Indonesia the article examines decisions of the Constitutional Court (Mahkamah Konstitusi) and its Honorary Council (Majelis Kehormatan Mahkamah Konstitusi) from 2019 to July 2026, obtained from the Court's official website (mkri.id), together with the statutes on the Court, the Corruption Eradication Commission, elections, and the armed forces, obtained from the national legal documentation network (peraturan.bpk.go.id). These sources were read in Indonesian; all translations are the author's. For Hungary and Poland the article relies on the official English texts of the constitutions, the judgments of the European Court of Human Rights and the Court of Justice of the European Union in English, and the opinions of the European Commission for Democracy through Law (Venice Commission). Polish and Hungarian decisions not available in English are cited through the scholars and official summaries that report them, and the footnotes say so. Online sources were last accessed on 18 September 2026.

The decisions and episodes were selected on one criterion: that they altered, or attempted to alter, a rule whose function was to secure the consent of actors outside the governing majority. The period begins with the Hungarian constitutional changes of 2010 and ends in September 2026. The analysis has three limits. It does not measure democratic quality, for which it relies on the political science literature cited. It treats events after April 2026 in Hungary as ongoing, and its conclusions on the Hungarian restoration are provisional. It does not claim that Indonesia has become an authoritarian regime; the claim is narrower, namely that its constitutional safeguards have been weakened by a mechanism that the prevailing models do not capture.

3. Three Routes to Retrogression: Amendment, Bypass, and Absorption

The literature on abusive constitutionalism has taught that democratic erosion now proceeds through law rather than against it.¹³ Less attention has been paid to the relationship between the eroding majority and the thresholds that the constitution sets. That relationship determines which legal instruments are available and, in turn, which safeguards are exposed. The three cases below differ not in the aims pursued, which were broadly similar, but in the route that the arithmetic of the legislature made available.

¹³ Landau (n 5); Scheppele (n 6).

3.1 Hungary: Erosion through the Amendment Power

In April 2010 the Fidesz–KDNP alliance won 263 of 386 seats with about 53 percent of the list vote, a two-thirds majority produced by a disproportional electoral system.¹⁴ Under the constitution then in force, two-thirds of all members sufficed to amend the constitution and to adopt a new one. The governing majority used the power in both forms. It first amended the old constitution to change the procedure for nominating constitutional judges, which had required cross-party agreement, and to restrict the Constitutional Court’s review of budgetary and tax laws after the Court had struck down a retroactive tax.¹⁵ It then enlarged the Court from eleven to fifteen members and, on 18 April 2011, adopted the Fundamental Law by 262 votes to 44.¹⁶

The Fourth Amendment of March 2013 completed the design. It repealed the Constitutional Court’s decisions made before the Fundamental Law entered into force, restored to the constitution several provisions the Court had annulled as unconstitutional, and confined the Court’s review of constitutional amendments to procedural requirements.¹⁷ The Venice Commission observed that the amendment used the constitution to shield from review measures that the Court had already found wanting. The pattern continued for more than a decade, through fifteen amendments by 2025, including the Ninth Amendment of 2020 and the Fifteenth Amendment of April 2025, which constitutionalized a priority of child protection used to justify restrictions on public assembly.¹⁸ The Hungarian route is the clearest instance of what Landau called abusive constitutionalism: the use of the formal amendment power to make a regime harder to dislodge.¹⁹

The lesson commonly drawn from Hungary is that the threshold was too low. Article S of the Fundamental Law still requires only two-thirds of the members of a single chamber, with no referendum, no second vote after an election, and no role for any other institution.²⁰ Formal amendment was accompanied by informal practices that concentrated power further, so that the text served as the visible part of a broader design.²¹ Scholars have accordingly recommended thresholds that are higher, more

¹⁴ Kovács and Tóth (n 1).

¹⁵ Gábor Halmai, ‘Coping Strategies of the Hungarian Constitutional Court since 2010’ (*Verfassungsblog*, 27 September 2022) <<https://verfassungsblog.de/coping-strategies-of-the-hungarian-constitutional-court-since-2010/>> accessed 18 September 2026.

¹⁶ Kovács and Tóth (n 1); Gábor Halmai, ‘Populism, Authoritarianism and Constitutionalism’ (2019) 20 *German Law Journal* 296.

¹⁷ Magyarország Alaptörvénye [Fundamental Law of Hungary] 2011, arts S(3) and 24(5) (official English translation); Venice Commission, ‘Opinion on the Fourth Amendment to the Fundamental Law of Hungary’ CDL-AD(2013)012, Opinion No 720/2013 (17 June 2013).

¹⁸ Human Rights Watch, ‘Hungary: Fundamental Law Changes Attack Rule of Law, Rights’ (17 April 2025) <<https://www.hrw.org/news/2025/04/17/hungary-fundamental-law-changes-attack-rule-of-law-rights>> accessed 18 September 2026.

¹⁹ Landau (n 5); Gábor Halmai, ‘From Liberal Democracy to Illiberal Populist Autocracy: Possible Reasons for Hungary’s Autocratization’ (2024) 16 *Hague Journal on the Rule of Law* 439; Bojan Bugarič, ‘Central Europe’s Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism’ (2019) 17 *International Journal of Constitutional Law* 597.

²⁰ Fundamental Law of Hungary (n 17) art S(2).

²¹ Zoltán Pozsár-Szentmiklósy, ‘Informal Concentration of Powers in Illiberal Constitutionalism: The Case of Hungary’ (2024) 16 *Hague Journal on the Rule of Law* 289.

tiered, or distributed across several actors.²² That diagnosis is correct for Hungary. It is, however, incomplete, because it assumes that the problem is the number of votes required rather than the independence of those who cast them.

3.2 Poland: Erosion around the Constitution

The Polish case begins from the opposite arithmetic. In 2015 the Law and Justice party won an absolute majority in the Sejm but fell well short of the two-thirds that Article 235 of the Constitution requires for amendment, together with an absolute majority of the Senate.²³ Unable to change the text, the majority changed the institutions that interpret it. In November 2015 the new Sejm declared that the election of five constitutional judges by its predecessor lacked legal force and elected five others. The Constitutional Tribunal held in K 34/15 that three of the earlier elections had been lawful,²⁴ and in K 47/15 that the statute reorganizing its procedure was unconstitutional; the government refused to publish the latter judgment.²⁵ The Tribunal was thereafter staffed by judges chosen by the majority, and the National Council of the Judiciary was reconstituted by the Act of 8 December 2017 so that its judicial members were elected by the Sejm rather than by judges.²⁶

Sadurski has described this as a constitutional breakdown achieved without constitutional amendment, in which statutes were used against the constitution rather than under it.²⁷ The European courts later confirmed the illegality of the resulting bodies. In *Xero Flor* the European Court of Human Rights held that a panel of the Tribunal including a judge elected to an occupied seat was not a tribunal established by law, and in *Reczkowicz* it reached the same conclusion about the Disciplinary Chamber of the Supreme Court.²⁸ The Court of Justice of the European Union found the disciplinary regime for judges incompatible with the Treaty on European Union.²⁹ The Polish route is therefore one of bypass. Its safeguard failed not because the threshold was reached but because the majority acted as if the threshold did not bind it, and then captured the institution competent to say otherwise.

3.3 Indonesia: Erosion through Absorption

Indonesia's amendment rule sits between the two. Article 37 of the Constitution requires that a proposal be submitted by one-third of the members of the People's

²² Rosalind Dixon and David Landau, 'Tiered Constitutional Design' (2018) 86 *George Washington Law Review* 438; Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford University Press 2019).

²³ Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland] 1997, art 235(4) (official English translation).

²⁴ Trybunał Konstytucyjny [Constitutional Tribunal], Judgment of 3 December 2015, K 34/15, as reported in *Xero Flor w Polsce sp z oo v Poland* App no 4907/18 (ECtHR, 7 May 2021).

²⁵ Trybunał Konstytucyjny, Judgment of 9 March 2016, K 47/15, as reported in Sadurski, *Poland's Constitutional Breakdown* (n 2); Venice Commission, 'Opinion on Amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland' CDL-AD(2016)001 (11 March 2016).

²⁶ Tímea Drinóczi and Agnieszka Bień-Kacała, 'Illiberal Constitutionalism: The Case of Hungary and Poland' (2019) 20 *German Law Journal* 1140.

²⁷ Sadurski, 'Constitutional Design' (n 2).

²⁸ *Xero Flor* (n 24); *Reczkowicz v Poland* App no 43447/19 (ECtHR, 22 July 2021).

²⁹ Case C-791/19 *Commission v Poland* EU:C:2021:596.

Consultative Assembly (Majelis Permusyawaratan Rakyat, MPR), that two-thirds of its members be present, and that the amendment be approved by more than half of all members; the unitary form of the state may not be amended at all.³⁰ The MPR consists of the 580 members of the DPR and the 152 members of the Regional Representative Council (Dewan Perwakilan Daerah, DPD). A coalition holding 470 DPR seats therefore exceeds the proposal threshold and the approval threshold on its own, and needs only a small number of regional representatives to meet the quorum. The Hungarian route is, in arithmetical terms, open. It has not been taken.

Instead, the coalition has pursued its aims through ordinary statutes, appointments, and litigation. In September 2020 the DPR amended the Constitutional Court Law to abolish the renewable five-year term and to allow sitting judges to serve until the age of seventy, applying the change to judges already in office.³¹ In September 2022 the DPR resolved to replace Justice Aswanto, one of its own nominees, with the Court's secretary-general, and the chair of the responsible commission justified the move by reference to Aswanto's votes to annul statutes passed by the DPR.³² Earlier, in 2019, the DPR had revised the law on the Corruption Eradication Commission within weeks, subjecting its investigative powers to a supervisory board; the Court upheld the procedure and softened only parts of the substance.³³ In March 2025 the armed forces law was amended within a month to widen the civilian offices open to serving officers; the Court rejected the formal challenge, with four of nine judges dissenting on the ground that public participation had been denied.³⁴

The most consequential episode passed through the Court itself. In Decision No 90/PUU-XXI/2023 the Court added to the minimum age of forty for presidential and vice-presidential candidates an alternative qualification: prior or current election to a regional office.³⁵ The decision enabled the incumbent president's son, then a mayor aged thirty-six, to stand for the vice-presidency. The Chief Justice who presided over the case was the candidate's uncle. The Honorary Council later found that he had committed a serious ethical breach and removed him from the office of Chief Justice, while holding

³⁰ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia 1945] art 37(1)–(5); author's translation.

³¹ Undang-Undang Nomor 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi [Law No 7 of 2020 on the Third Amendment to Law No 24 of 2003 on the Constitutional Court] art 87(b); Idul Rishan, Sri Hastuti Puspitasari and Sri Ratna Mardhatillah, 'Amendment to Term of Office of Constitutional Court Judges in Indonesia' (2022) 18 *Varia Justicia* 141.

³² 'DPR Dicap Membangkang Konstitusi gara-gara Copot Aswanto dari MK' [DPR Branded Defiant of the Constitution for Removing Aswanto from the Constitutional Court] *CNN Indonesia* (Jakarta, 4 October 2022) <<https://www.cnnindonesia.com/nasional/20221004123225-32-856133/>> accessed 18 September 2026.

³³ Undang-Undang Nomor 19 Tahun 2019 tentang Perubahan Kedua atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi [Law No 19 of 2019 on the Second Amendment to the Law on the Corruption Eradication Commission]; Mahkamah Konstitusi [Constitutional Court], Decision No 70/PUU-XVII/2019 (4 May 2021); Thomas P Power, 'Assailing Accountability: Law Enforcement Politicisation, Partisan Coercion and Executive Aggrandisement in the Jokowi Era' in Power and Warburton (n 10) 277.

³⁴ Undang-Undang Nomor 3 Tahun 2025 tentang Perubahan atas Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia [Law No 3 of 2025 on the Amendment to the Law on the Indonesian National Armed Forces] art 47; Mahkamah Konstitusi, Decision No 81/PUU-XXIII/2025 (17 September 2025).

³⁵ Mahkamah Konstitusi, Decision No 90/PUU-XXI/2023 (16 October 2023) [3.13.2]–[3.17]; Björn Dressel and Cristina Regina Bonoan, 'Courts and Authoritarian Populism in Asia: Reflections from Indonesia and the Philippines' (2024) 46 *Law & Policy* 277.

that it had no power to review the decision.³⁶ This is what Landau and Dixon call abusive judicial review: a court used not to check power but to enable it.³⁷

Why would a coalition that could amend the constitution choose not to? The answer lies in the nature of absorption. An absorbed coalition is large but not cohesive. It is held together by the distribution of office and patronage rather than by a shared constitutional project, and its members retain the option of leaving.³⁸ A formal amendment would require a visible, recorded, and collective act for which each party would bear responsibility; a statute on the tenure of judges or the eligibility of candidates can be passed quickly, with lower salience, and presented as technical. The pattern persisted after the transfer of power in 2024, when the outgoing and incoming presidents' parties passed, in the final weeks of the outgoing legislature, statutes expanding the presidency's advisory and ministerial apparatus with little public participation.³⁹ Absorption thus produces erosion that is diffuse in authorship, statutory in form, and incremental in pace. It is not Hungarian, because the text is untouched; it is not Polish, because the statutes are enacted within, not against, the procedures the constitution prescribes. Table 1 summarizes the three routes.

Table 1. Three routes to constitutional retrogression

Dimension	Hungary (2010–2026)	Poland (2015–2023)	Indonesia (2014–2026)
Governing bloc and amendment threshold	Single party above two-thirds (art 5)	Majority below two-thirds (art 235)	Absorbed coalition above most art 37 thresholds
Primary instrument	Constitutional replacement and amendment	Statutes contrary to the Constitution	Ordinary statutes, appointments, and adjudication
Fate of the text	Rewritten	Unchanged but disregarded	Unchanged and formally observed
Treatment of the court	Enlarged; jurisdiction curtailed	Seats occupied; judgments unpublished	Tenure extended; judge recalled; tethering bill pending
Position of the opposition	Defeated	Outvoted and ignored	Absorbed into cabinet
Restoration	Since 2026, by a new two-thirds majority	Since 2023, blocked by presidential vetoes	No turnover yet

Source: author compilation from the constitutional texts, statutes and decisions.

Absorption has a second feature that distinguishes it from both European cases. Because the opposition is absorbed rather than eliminated, it can be released. A party

³⁶ Majelis Kehormatan Mahkamah Konstitusi [Honorary Council of the Constitutional Court], Decision No 2/MKMK/L/11/2023 (7 November 2023).

³⁷ David Landau and Rosalind Dixon, 'Abusive Judicial Review: Courts Against Democracy' (2020) 53 UC Davis Law Review 1313; Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press 2021) 81–115.

³⁸ Mietzner, *The Coalitions Presidents Make* (n 4); Marcus Mietzner, 'Elite Collusion in Indonesia: How It Has Both Enabled and Limited Executive Aggrandizement' (2024) 712 *Annals of the American Academy of Political and Social Science* 223.

³⁹ Rendy Wadipalapa, Poltak Nainggolan and Riris Katharina, 'Protecting Two Presidents: Legislative Decline in Indonesia's Post-2024 Election Transition' (2025) 32 *Journal of Legislative Studies* 263.

that joins the coalition for office may leave it when the costs of membership rise, as the political reaction to public protest in August 2024 showed. This makes absorptive backsliding less stable than the Hungarian model but also harder to resist through the usual channels, since there is no organized opposition in the legislature to mobilize the safeguards the constitution provides. The question is then not whether the safeguards exist but who is left to use them.

4. Why Consensus-Based Safeguards Fail under Absorption

The design literature offers two families of safeguard against retrogression. The first raises the cost of changing the rules, through supermajorities, multiple veto players, and tiered amendment procedures.⁴⁰ The second entrusts the defense of the rules to an independent arbiter, usually a constitutional court.⁴¹ Both families are consensus-based: they work by ensuring that no single political actor can change the rules or choose the referee. Indonesia shows that consensus can be manufactured, and that a safeguard premised on consent fails when consent becomes a commodity distributed by the executive.

4.1 Thresholds That Count Seats Rather Than Contestation

A supermajority threshold is a proxy. What the constitution seeks to secure is the agreement of political forces that do not share the government's interest in the change; what the threshold measures is the number of seats. In most parliamentary democracies the two coincide closely enough, because the parties outside government are the government's competitors at the next election. Under coalitional presidentialism they diverge. A party that has accepted cabinet posts has exchanged its role as competitor for a role as partner, and its votes no longer register dissent even when its voters might.⁴²

The Indonesian Constitutional Court has itself recognized the problem. In Decision No 62/PUU-XXII/2024 it struck down the threshold that had allowed only parties or coalitions holding twenty percent of DPR seats or twenty-five percent of the national vote to nominate presidential candidates, and it instructed the legislature that any new nomination rule must prevent coalitions from becoming so dominant that they limit the choices available to voters.⁴³ The Court thus identified oversized coalitions as a constitutional harm in their own right, not merely as a feature of party politics. The reasoning is significant because it moves the analysis from the number of votes to the

⁴⁰ Dixon and Landau, 'Tiered Constitutional Design' (n 22); Tom Ginsburg and Aziz Z Huq, *How to Save a Constitutional Democracy* (University of Chicago Press 2018).

⁴¹ Samuel Issacharoff, *Fragile Democracies: Contested Power in the Era of Constitutional Courts* (Cambridge University Press 2015).

⁴² Slater (n 4); AB Berlucchi and Marisa Kellam, 'Who's to Blame for Democratic Backsliding: Populists, Presidents or Dominant Executives?' (2023) 30 *Democratization* 815.

⁴³ Mahkamah Konstitusi, Decision No 62/PUU-XXII/2024 (2 January 2025); Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum [Law No 7 of 2017 on General Elections] art 222.

structure of competition. It treats the nomination threshold as a device that had converted a plurality into a monopoly by making coalition-building compulsory.

The same logic applies to the amendment rule. Article 37 was designed in 1999–2002 by an MPR in which no party held a majority and in which the military and police still held appointed seats. Its thresholds were calibrated to a fragmented chamber. They assumed that reaching two-thirds attendance and an absolute majority would require negotiation among rivals. In a chamber where one coalition holds four-fifths of the elected members of the DPR, the same numbers require no negotiation beyond the coalition's own internal bargaining. The threshold has not been lowered; the political ground beneath it has moved. That is why the draft studies on State Policy Guidelines (Pokok-Pokok Haluan Negara) released by the MPR's Assessment Body in 2026, which describe a constitutional amendment as a necessity and propose to shield the guidelines from judicial review, deserve closer attention than they have received.⁴⁴ The discourse of returning to the original 1945 Constitution, whose integralist design concentrated authority in the MPR and the presidency, gives such proposals a restorative vocabulary that obscures their direction.⁴⁵ If absorption graduates to amendment, Article 37 will offer little more resistance than Article S did in Hungary.

Hungary and Poland confirm the point from opposite directions. In Hungary the threshold failed because a single party reached it by winning; in Poland it held because the governing party could not reach it, and the damage was done by other means. In neither case did the threshold function as a guarantee of cross-party consent, because in Hungary there was no need for consent and in Poland there was no attempt to seek it. Indonesia adds the case in which the consent is obtained but is no longer meaningful. The lesson is not that thresholds are useless. It is that a threshold measured only in seats at a single moment is vulnerable to any political strategy that can concentrate seats at that moment, whether by electoral victory, disproportional electoral rules, or cabinet patronage.

4.2 Split Appointment and the Recallable Judge

The second consensus-based safeguard is the division of judicial appointments among several institutions. Article 24C(3) of the Indonesian Constitution provides that the nine constitutional judges are appointed by the President, three each on the nomination of the Supreme Court, the DPR, and the President.⁴⁶ The design borrows from the logic of the Italian and Korean models: no single branch should control the composition of the Court. Under absorption this logic weakens considerably, because the President and the DPR, which together nominate two-thirds of the Court, are controlled by the same

⁴⁴ 'Draft PPHN MPR: dari Amandemen UUD hingga Lembaga Siber Baru' [The MPR's Draft PPHN: From Constitutional Amendment to a New Cyber Agency] *Tirto* (Jakarta, 2026) <<https://tirto.id/draft-pphn-mpr-dari-amandemen-uud-hingga-lembaga-siber-baru-hB9K>> accessed 18 September 2026.

⁴⁵ Abdurrachman Satrio, 'Restoring Indonesia's (Un)Constitutional Constitution: Soepomo's Authoritarian Constitution' (2023) 24 *German Law Journal* 402.

⁴⁶ Constitution of the Republic of Indonesia 1945 (n 30) art 24C(3).

coalition. The Supreme Court's nominees are then the only ones selected outside the coalition's reach, and they are a minority on the bench.

The more serious problem is that nomination has been treated as a continuing relationship rather than a single act. The recall of Justice Aswanto in 2022 rested on a reading of the Court's own earlier decision. In Decision No 96/PUU-XVIII/2020 the Court upheld the application of the new tenure rules to sitting judges but added that it would send a confirmation to the nominating institutions that the judges would continue in office.⁴⁷ The DPR treated the confirmation as an invitation to reconsider its nominee. In Decision No 103/PUU-XX/2022 the Court responded that a constitutional judge may be removed only on the grounds exhaustively listed in Article 23 of the Constitutional Court Law and that the confirmation was a notification, not a renewal.⁴⁸ The episode then took a further turn: the published text of that decision was found to differ from the version read in court, replacing the words "accordingly" with "going forward" so as to confine the holding to the future. The Honorary Council found the newly appointed judge responsible and issued a written reprimand, while holding that the version pronounced in court was authoritative.⁴⁹

Split appointment thus turned into a power of recall, in a judicial system whose independence was already uneven.⁵⁰ A bill to amend the Constitutional Court Law a fourth time, agreed at committee level in May 2024 and carried over to the new DPR, would formalize the change: judges who had served between five and ten years would require confirmation by the institution that nominated them.⁵¹ Discussion of the bill revived in July 2025 after the Court decided to separate national from local elections, a ruling that several coalition parties denounced as the Court acting as a legislator.⁵² The bill had not been enacted by September 2026, but its existence functions as a standing threat, and a standing threat is one of the instruments through which judicial independence is eroded without any law being passed.

The comparison with Central Europe sharpens the point. Hungary packed its court by enlarging it; Poland packed its tribunal by electing judges to occupied seats.⁵³ Both acts were visible and, in the Polish case, adjudicated as unlawful by international courts. Indonesia has not packed its court in either sense. It has done something less visible: it has shortened the distance between the judge and the nominating institution

⁴⁷ Mahkamah Konstitusi, Decision No 96/PUU-XVIII/2020 (20 June 2022) [3.22].

⁴⁸ Mahkamah Konstitusi, Decision No 103/PUU-XX/2022 (23 November 2022) [3.13.3].

⁴⁹ 'Hakim MK Guntur Disanksi Teguran Tertulis di Kasus Ubah Pertimbangan Putusan' [Constitutional Judge Guntur Sanctioned with Written Reprimand in Case of Altered Legal Reasoning] *detikNews* (Jakarta, 20 March 2023) <<https://news.detik.com/berita/d-6629055/>> accessed 18 September 2026.

⁵⁰ Simon Butt, *Judicial Dysfunction in Indonesia* (Melbourne University Press 2023).

⁵¹ 'Analysis: Law Revision Deemed Putting Leash on Constitutional Court' *The Jakarta Post* (Jakarta, 29 May 2024) <<https://www.thejakartapost.com/opinion/2024/05/29/analysis-law-revision-deemed-putting-leash-on-constitutional-court.html>> accessed 18 September 2026.

⁵² Mahkamah Konstitusi, Decision No 135/PUU-XXII/2024 (26 June 2025) [3.16]–[3.18]; 'Lawmakers Revisit Constitutional Court Law after Election Ruling' *The Jakarta Post* (Jakarta, 10 July 2025) <<https://www.thejakartapost.com/indonesia/2025/07/10/lawmakers-revisit-constitutional-court-law-after-election-ruling.html>> accessed 18 September 2026.

⁵³ Rishan (n 11); Bojan Bugarič and Tom Ginsburg, 'The Assault on Postcommunist Courts' (2016) 27(3) *Journal of Democracy* 69.

by making tenure depend, in practice or in prospect, on the continued approval of that institution. Rishan's comparison treats the Indonesian measures as a form of court packing.⁵⁴ The better characterization is court tethering. Packing changes who sits on the court; tethering changes whom the judges must satisfy in order to remain there.

4.3 The Court as a Site of Both Capture and Resistance

The Indonesian Court has not behaved as a captured institution in any consistent sense. After the Honorary Council's decision of November 2023, the Court issued a series of decisions that ran directly against the interests of the governing coalition. On 20 August 2024, in Decisions No 60/PUU-XXII/2024 and No 70/PUU-XXII/2024, it lowered the thresholds for nominating regional heads so that parties without seats in the regional legislature could nominate candidates, and it held that the minimum age for candidates must be met when candidates are formally registered rather than when they take office.⁵⁵ The second holding set aside the effect of a Supreme Court ruling that would have allowed another son of the former president to stand for regional office.

The legislature's response was immediate. On 21 August 2024 the DPR's Legislation Body approved, in a single day, a revision of the regional elections law that would have preserved the old thresholds for parties with seats and adopted the Supreme Court's rule on age; eight of nine party groups supported it.⁵⁶ The next day, after mass protests in Jakarta and other cities under the banner *Peringatan Darurat* (Emergency Warning), the plenary session failed to reach a quorum and the revision was abandoned. The General Elections Commission then issued a regulation that implemented both decisions.⁵⁷

The episode reveals the peculiar structure of resilience under absorption. The legislature, which in a competitive system would contain an opposition able to block the override, supplied no resistance; eight of nine groups voted for it. Resistance came instead from the Court, from citizens in the street, and from the internal fragility of the coalition, whose members were unwilling to bear the cost of an open confrontation.⁵⁸ The Court's later decisions abolishing the presidential nomination threshold and separating national from local elections continued this pattern. In June 2026 it declined, on grounds of standing, to rule on a petition concerning the election of regional heads by regional legislatures, a proposal supported by most coalition parties, but stated that regional elections are at present direct.⁵⁹

⁵⁴ Rishan (n 11).

⁵⁵ Mahkamah Konstitusi, Decision No 60/PUU-XXII/2024 (20 August 2024); Mahkamah Konstitusi, Decision No 70/PUU-XXII/2024 (20 August 2024).

⁵⁶ 'Kronologi Putusan MK, Sidang Baleg hingga Revisi UU Pilkada Batal' [Chronology of the Court's Decision, the Legislation Body's Session, and the Cancellation of the Regional Elections Law Revision] *CNBC Indonesia* (Jakarta, 23 August 2024) <<https://www.cnbcindonesia.com/research/20240823080223-128-565737/>> accessed 18 September 2026.

⁵⁷ Peraturan Komisi Pemilihan Umum Nomor 10 Tahun 2024 [General Elections Commission Regulation No 10 of 2024] arts 11 and 15.

⁵⁸ Mietzner, 'The Limits of Autocratisation in Indonesia' (n 10); Marcus Mietzner, 'Flirting with Autocracy in Indonesia' (2025) 44 *Journal of Current Southeast Asian Affairs* 366.

⁵⁹ Mahkamah Konstitusi, Decision No 195/PUU-XXIV/2026 (29 June 2026); 'Political Parties Respect Court Ruling Upholding Direct Regional Elections' *The Jakarta Post* (Jakarta, 3 July 2026)

This dual role complicates the literature on abusive judicial review. Landau and Dixon treat courts as either instruments of erosion or obstacles to it, and they explain the former by the court's composition and the regime's control over appointments.⁶⁰ The Indonesian Court was both within a single year, and its composition barely changed between Decision No 90/PUU-XXI/2023 and Decisions No 60 and No 70/PUU-XXII/2024. What changed was the Court's perception of its own legitimacy after the ethics ruling, and the salience of public scrutiny. Resilience located in the judiciary is therefore real but contingent. It depends on the judges' reading of the political moment, and it can be withdrawn as easily as it was supplied, as the rejection of the formal challenge to the armed forces law in 2025 illustrates. A constitution that relies on the court's courage has not designed resilience; it has hoped for it.

5. Resilience and Restoration: What Budapest and Warsaw Teach Jakarta

Restoration after autocratic rule has become, in the space of three years, a live problem in both Central European cases. Poland changed government in December 2023, and Hungary in May 2026. Their experiences matter for Indonesia not because Indonesia faces a similar transition, but because they reveal which features of the eroded order persist into the attempt to repair it. The literature on constitutional repair has shown that restoration faces a paradox: the tools needed to dismantle a captured order often resemble the tools used to build it.⁶¹ European scholarship has begun to treat this as a distinct stage of constitutional development, a second transition with its own dilemmas of legality and legitimacy.⁶² The two cases show the paradox in its two forms.

5.1 Hungary after 2026: Restoration by Supermajority

On 12 April 2026 the Tisza party won 141 of 199 seats, a two-thirds majority on its own, and Péter Magyar became Prime Minister when the new National Assembly convened on 9 May.⁶³ The same rule that allowed Fidesz to entrench itself now allowed its successor to dismantle that entrenchment. The Sixteenth Amendment, adopted on 15 June 2026, limited Prime Ministers to two terms counted from 1990, which bars the former Prime Minister from returning, and removed the constitutional basis of the foundations that had placed state assets beyond the reach of future governments.⁶⁴ The Seventeenth Amendment, adopted on 13 July 2026 after a five-day consultation, terminated the mandate of the sitting President, restored the retirement age of seventy

<<https://www.thejakartapost.com/indonesia/2026/07/03/political-parties-respect-court-ruling-upholding-direct-regional-elections>> accessed 18 September 2026.

⁶⁰ Landau and Dixon (n 37).

⁶¹ Tom Gerald Daly, "'Good' Court-Packing? The Paradoxes of Constitutional Repair in Contexts of Democratic Decay' (2022) 23 German Law Journal 1071; Tom Gerald Daly, 'Democratic Decay: Conceptualising an Emerging Research Field' (2019) 11 Hague Journal on the Rule of Law 9.

⁶² Michal Bobek and others (eds), *Transition 2.0: Re-establishing Constitutional Democracy in EU Member States* (Nomos 2023).

⁶³ CNN, live coverage of the Hungarian parliamentary election (12 April 2026) <<https://www.cnn.com/2026/04/12/world/live-news/hungary-election-orban-magyar>> accessed 18 September 2026; National Election Office of Hungary, official results of the parliamentary election of 12 April 2026.

⁶⁴ 'Hungarian Parliament Adopts Amendment to Fundamental Law Which Prevents Viktor Orbán from Being PM Again' *Telex* (Budapest, 15 June 2026) <<https://telex.hu/english/2026/06/15/hungarian-parliament-adopts-amendment-to-fundamental-law-which-prevents-viktor-orban-from-being-pm-again>> accessed 18 September 2026.

for constitutional judges with the effect of ending four mandates on 1 September, reduced judicial terms from twelve to nine years, repealed the restriction on the Court's review of budgetary laws, and described itself as transitional pending a new constitution to be drafted through an inclusive process ending in a referendum.⁶⁵

Defenders of these measures argue that an official who acquiesced in the illiberal changes cannot claim the protection owed to a neutral guardian, and that removal by amendment is an exceptional act of accountability rather than a breach of the rule of law.⁶⁶ Critics answer that the means echo those of 2011, when the retirement age of ordinary judges was lowered to remove senior members of the judiciary, a measure the Court of Justice found discriminatory.⁶⁷ The Venice Commission's opinion on the Seventeenth Amendment was pending at the time of writing. Whatever its conclusion, the Hungarian case shows restoration by the instrument of erosion. It is not merely the reversal of what was done but a repetition of how it was done: a single-chamber supermajority, acting quickly, with limited consultation, and reaching officeholders whose terms the constitution had fixed.

The significance for design is that the Hungarian safeguard failed twice in the same way. Article S could not prevent entrenchment in 2011 and cannot prevent over-correction in 2026, because in both periods it asks only whether one majority has enough seats. The promise of a new constitution through a referendum is therefore the most important element of the restoration, because it is the only element that submits the constitutional settlement to a decision-maker other than the parliamentary majority of the day.

5.2 Poland after 2023: Restoration under Cohabitation

Poland presents the inverse problem. The coalition that took office in December 2023 had a majority in the Sejm but not the two-thirds required to amend the Constitution, and it faced a President aligned with the former government. Its first step was a Sejm resolution of 6 March 2024 declaring that the judges elected to occupied seats in 2015 had been appointed unlawfully, on which basis the government declined to publish the Tribunal's subsequent rulings.⁶⁸ Statutes to reconstitute the Tribunal and the National Council of the Judiciary followed but were referred to the Tribunal or vetoed. After Karol Nawrocki won the presidential election of June 2025 with 50.89 percent of the vote, the vetoes continued, including that of February 2026 against a bill restoring the election of

⁶⁵ Flóra Fazekas, András Kádár and Nóra Novoszádek, 'Temporary Fixes and Long-Term Commitments: Hungary's 17th Amendment to the Fundamental Law' (*ConstitutionNet*, 2 August 2026) <<https://constitutionnet.org/news/voices/temporary-fixes-and-long-term-commitments-hungarys-17th-amendment>> accessed 18 September 2026.

⁶⁶ Nóra Chronowski, 'The New Constitutional Amendment and the Removal of the President: Hungary's First Steps on a Long Road to the Rule of Law' (*Verfassungsblog*, 15 July 2026) <<https://verfassungsblog.de/the-new-constitutional-amendment/>> accessed 18 September 2026.

⁶⁷ Human Rights Watch, 'Hungary: Rushed Constitutional Changes Undermine Rule of Law' (25 June 2026) <<https://www.hrw.org/news/2026/06/25/hungary-rushed-constitutional-changes-undermine-rule-of-law>> accessed 18 September 2026; Case C-286/12 *Commission v Hungary* EU:C:2012:687.

⁶⁸ Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 6 marca 2024 r. w sprawie usunięcia skutków kryzysu konstytucyjnego lat 2015–2023 w kontekście działalności Trybunału Konstytucyjnego [Resolution of the Sejm of 6 March 2024 on Removing the Effects of the Constitutional Crisis of 2015–2023 in the Context of the Activity of the Constitutional Tribunal].

judicial members of the Council by judges.⁶⁹ By mid-2026 the Sejm had elected new constitutional judges whom the President declined to swear in, the Tribunal had held that the President's duty to take their oath was not absolute, and the European Court of Human Rights had ordered by interim measure that the judges not be prevented from taking up office.⁷⁰

The Venice Commission has repeatedly cautioned against restoration by the methods of capture. It has stated that the wholesale invalidation, with retroactive effect, of all appointments made by the reconstituted Council does not fit into the rule of law concept, and that affected judges must be assessed in groups and individually, with access to judicial review.⁷¹ On the Tribunal it recommended that the irregularly elected judges withdraw from cases and noted that the proposed constitutional amendments lacked the majority Article 235 requires.⁷² Polish scholarship has described the government's resulting strategy as a mix of procedural violation, strategic marginalization, and principled legalism.⁷³ The Polish case shows that a threshold that successfully prevented erosion by amendment now prevents restoration by amendment, and that the institutions captured during the erosion, the presidency and the Tribunal, have become veto players against repair.⁷⁴

5.3 Designing Resilience before Turnover: Lessons for Indonesia

The two restorations teach a common lesson from opposite directions. In Hungary the problem is that repair is too easy for whoever holds the numbers; in Poland the problem is that repair is too hard because the damaged institutions hold vetoes. Both are consequences of safeguards that operate at a single moment and count only seats. Indonesia has not yet reached the stage of restoration, and that is precisely its advantage. It can design resilience before turnover rather than after it. Four implications follow.

The first is to supplement numerical thresholds with temporal ones. The comparative repertoire already contains the relevant device. Sweden requires that a fundamental law be adopted by two identical decisions separated by a general

⁶⁹ 'President Vetoes Bill Reforming Judicial Body at Heart of Poland's Rule-of-Law Crisis' *Notes from Poland* (19 February 2026) <<https://notesfrompoland.com/2026/02/19/president-vetoes-bill-reforming-judicial-body-at-heart-of-polands-rule-of-law-crisis/>> accessed 18 September 2026.

⁷⁰ 'Polish Constitutional Court Endorses President's Right Not to Swear In New Judges' *Notes from Poland* (13 May 2026) <<https://notesfrompoland.com/2026/05/13/polish-constitutional-court-endorses-presidents-right-not-to-swear-in-new-judges/>> accessed 18 September 2026; 'European Court Orders Polish Constitutional Tribunal to Accept Judges Rejected by President' *Notes from Poland* (6 May 2026) <<https://notesfrompoland.com/2026/05/06/european-court-orders-polish-constitutional-tribunal-to-accept-judges-rejected-by-president/>> accessed 18 September 2026.

⁷¹ Venice Commission and Directorate General Human Rights and Rule of Law, 'Joint Opinion on European Standards Regulating the Status of Judges' CDL-AD(2024)029 (October 2024) paras 20–22, 32 and 51.

⁷² Venice Commission, 'Opinion on the Draft Constitutional Amendments concerning the Constitutional Tribunal and Two Draft Laws on the Constitutional Tribunal' CDL-AD(2024)035 (December 2024) paras 23–25 and 34.

⁷³ Maria Skóra and Anna Wójcik, 'Democratic Front-Sliding in Action: Procedural Violation, Strategic Marginalisation, and Principled Legalism in Poland' (2026) *Hague Journal on the Rule of Law* <<https://doi.org/10.1007/s40803-026-00277-8>> accessed 18 September 2026; Wojciech Piątek, 'Restoring the Rule of Law in Poland: Towards the Most Appropriate Way to Put an End to the Systemic Violation of Judicial Independence' (2025) 21 *European Constitutional Law Review* 139; Marcin Szwed, 'Fixing the Problem of Unlawfully Appointed Judges in Poland in the Light of the ECHR' (2023) 15 *Hague Journal on the Rule of Law* 353.

⁷⁴ Katarína Šipulová and David Kosař, 'Purging the Judiciary After a Transition: Between a Rock and a Hard Place' (2025) 17 *Hague Journal on the Rule of Law* 61.

election,⁷⁵ and the Netherlands requires that a proposed revision be approved again, by two-thirds, by the chambers constituted after an election.⁷⁶ A rule of this kind responds directly to absorption. A coalition built by patronage can assemble a supermajority within a single term; it cannot guarantee that its members will still be in office, or still in coalition, after voters have spoken. The rule does not abandon the supermajority, but adds to it a requirement that the supermajority survive an election. Applied to the provisions on elections, the presidential term, and the judiciary, such a requirement would have made the Hungarian entrenchment of 2011 slower and the Hungarian over-correction of 2026 more deliberate. Seats can be absorbed; elections cannot.

The second is to freeze the rules of electoral competition before a vote. The Venice Commission's Code of Good Practice in Electoral Matters advises that the fundamental elements of electoral law should not be open to amendment less than one year before an election.⁷⁷ Both of the most serious Indonesian episodes, Decision No 90/PUU-XXI/2023 and the attempted legislative override of August 2024, changed eligibility rules weeks before candidate registration. A constitutional rule that no change in candidate eligibility, whether by statute or by judicial decision, applies to the next election if made within a fixed period before it, would neutralize this form of erosion without asking any institution to judge its motives. The rule is neutral in the relevant sense: it binds the legislature and the Court alike.

The third is to insulate judicial tenure by making changes to it prospective. The recall of Justice Aswanto, the transitional provision of Law No 7 of 2020, and the pending bill on confirmation all share a single feature: they alter the terms of office of judges already sitting. The Hungarian restoration shows that the same tool can serve the opposite purpose, since the Seventeenth Amendment ended four constitutional mandates by changing the retirement age of judges already in office. A rule that any change in the tenure, retirement age, or removal of constitutional judges applies only to judges appointed after the change would protect the Court against tethering in the present and against over-correction in the future. It would also resolve the ambiguity of Article 24C(3) by making clear that nomination is a single act, exhausted on appointment, and not a continuing relationship.

The fourth concerns militant constitutionalism. Indonesia already possesses the instruments of democratic self-defense, but it has directed them downward, against organizations at the margins of politics. The dissolution of Hizbut Tahrir Indonesia in 2017 under an emergency regulation on mass organizations was justified as a defense of the constitutional order and was criticized as a means of fighting illiberalism with illiberal tools.⁷⁸ The comparative debate on militant democracy has long warned that its

⁷⁵ Regeringsformen [Instrument of Government of Sweden] 1974, ch 8 art 14.

⁷⁶ Grondwet voor het Koninkrijk der Nederlanden [Constitution of the Kingdom of the Netherlands] 1815, art 137.

⁷⁷ Venice Commission, 'Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report' CDL-AD(2002)023rev, guideline II.2.b.

⁷⁸ Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 tentang Perubahan atas Undang-Undang Nomor 17 Tahun 2013 tentang Organisasi Kemasyarakatan [Government Regulation in Lieu of Law No 2 of 2017 on the Amendment to the Law on Mass Organizations]; Marcus Mietzner, 'Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia' (2018) 91 *Pacific Affairs* 261.

tools are available to those who hold power.⁷⁹ The experience of Hungary and Poland suggests that the more serious threat to constitutional democracy in the region comes from above rather than from the margins. Democratic self-defense under absorption should therefore be turned upward, toward incumbents: limits on the repeated extension of executive and judicial tenure, prohibitions on changing electoral rules in favor of those in office, and protection for the institutions that audit and investigate the executive. The Hungarian limit on prime-ministerial terms is, in this sense, an instance of militant constitutionalism aimed at incumbents rather than at dissidents.

These proposals do not rely on the existence of an opposition, which is their point. They do not ask a coalition to restrain itself, but place the restraint in time, in generality, and in prospectivity, which are features of rules that absorption cannot easily neutralize. They move the design of resilience from consent to temporality, and from the question of who must agree to the question of when agreement becomes effective.

6. Conclusion

This article has argued that the comparative account of constitutional retrogression, built on the Hungarian and Polish experiences, omits a third route. In Hungary a governing party that won a supermajority used the amendment power to entrench itself. In Poland a governing party without a supermajority bypassed the constitution through statutes and captured the tribunal competent to object. In Indonesia a governing coalition that absorbed its rivals left the text intact and eroded its safeguards through statutes on judicial tenure, the recall of a judge, legislation passed at speed, and a judicial decision that changed the rules of a presidential election. Absorptive backsliding is diffuse in authorship, statutory in form, and incremental in pace.

In answering the research questions, the article concludes, first, that absorption differs from amendment and bypass because it neither changes nor defies the constitutional text, but deprives the text's protective rules of the actors on whom they depend. Second, consensus-based safeguards fail under absorption because supermajority thresholds count seats rather than contestation, and because split appointment turns into a power of recall once the appointing institutions answer to the same coalition. The Constitutional Court's shift from enabling erosion in 2023 to resisting it in 2024 shows that judicial resilience is real but contingent. Third, the Hungarian and Polish restorations show that safeguards operating at a single moment either make repair too easy for whoever holds the numbers or too hard for anyone who does not. Indonesia, which has not yet experienced turnover, can design resilience in advance by relying on time rather than numbers: amendment rules that require a supermajority to survive an election, a freeze on electoral rules before a vote, prospective application of changes to judicial tenure, and a form of militant constitutionalism directed at incumbents rather than at the margins.

⁷⁹ Anthoula Malkopoulou and Alexander S Kirshner (eds), *Militant Democracy and Its Critics: Populism, Parties, Extremism* (Edinburgh University Press 2019).

The argument extends beyond the three cases. Coalitional presidentialism is common across Latin America, Africa, and Southeast Asia, and grand coalitions have appeared in parliamentary systems as well. Wherever the executive can convert the opposition into a partner, the assumption that a supermajority represents cross-party consent should be treated with caution. The design of resilient constitutions has so far asked how many must agree. The experience of absorption suggests that it should also ask when that agreement takes effect. Constitutional resilience is then neither a matter of hoping that courts will be brave nor of trusting that majorities will be restrained; it becomes a matter of placing the most dangerous changes beyond the reach of any single political moment.

Statements

AI use. a generative artificial-intelligence tool, was used solely to translate the author’s manuscript into polished academic English. The research design, literature review, development of arguments, and all substantive intellectual contributions were independently undertaken by the author. The author reviewed and approved the final manuscript, verified all sources and legal propositions, and accepts full responsibility for its content. No artificial-intelligence tool is listed as an author.

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