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Infrastructural Rigidity: Formal Amendment in Indonesia, the Philippines, and South Korea

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ABSTRACT

Constitutions with very different amendment rules can share the same outcome. Indonesia’s 1945 Constitution has not been formally amended since 2002, and the Philippine and South Korean Constitutions have not been amended since their adoption in 1987, although Indonesia requires only an absolute majority of its People’s Consultative Assembly and no referendum, the Philippines requires a plebiscite, and South Korea combines a two-thirds parliamentary majority with a referendum subject to a turnout quorum. Neither the difficulty of amendment rules nor the idea of amendment culture explains this convergence. A doctrinal and functional comparison of the three amendment clauses, their implementing statutes and parliamentary rules, the leading judicial decisions, and every amendment attempt that reached a formal stage between 1987 and September 2026 shows that rigidity in these systems is infrastructural rather than numerical. The decisive obstacles lie in the law through which the amendment rules are operated: in Indonesia, an unregulated procedure that cannot confine an amendment session to its stated agenda; in the Philippines, a contested voting mode and inadequate initiative legislation; and in South Korea, a referendum law that was inoperative from 2016 to 2026 and a members-in-office threshold that makes a minority boycott decisive. Part of what comparative scholarship has treated as amendment culture is a rational response to that infrastructure. The concepts of amendment infrastructure and infrastructural rigidity connect rules-based and culture-based accounts of formal amendment and support a reconstruction of Indonesia’s amendment procedure that adds predictability without lowering its thresholds or importing a referendum.

Keywords: *amendment culture; amendment infrastructure; constitutional rigidity; formal amendment; referendum*

JURISDICTIONAL STATEMENT

This article examines Indonesia, the Philippines, and South Korea. All three are presidential democracies whose current constitutional settlements emerged from transitions out of authoritarian rule and have gone more than two decades without formal amendment despite repeated proposals, yet their amendment rules differ sharply in threshold, ratification, and pathways. The comparison holds the outcome constant while the rules vary, isolating the legal infrastructure through which amendment rules are operated.

1. Introduction

The study of formal amendment is increasingly characterised by a paradox. On the one hand, constitutional designers invest heavily in amendment rules, calibrating supermajorities, referendums, and ratification thresholds as though the difficulty of change could be engineered with precision. On the other hand, the empirical record shows that constitutions with similar rules are amended at radically different rates, while constitutions with modest thresholds sometimes remain unamended for decades.¹ The paradox is not merely a problem of measurement but a problem of theory. It asks what, precisely, makes a constitution rigid when the numbers written into its amendment clause do not.

Three constitutions in East and Southeast Asia sharpen the question. Indonesia amended its 1945 Constitution four times between 1999 and 2002 and has not amended it since. The Philippines adopted its present Constitution in 1987 and has never amended it. South Korea adopted its present Constitution in the same year and has likewise never amended it, even though its earlier constitutions were amended nine times between 1952 and 1980.² All three are post-authoritarian settlements, all three were designed in part to prevent the manipulation of the constitution by incumbents, and all three now face sustained demands for change. Yet their amendment rules differ sharply. Indonesia requires no referendum and only an absolute majority of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR) for final adoption. The Philippines requires a plebiscite for every amendment. South Korea requires both a two-thirds parliamentary majority and a national referendum with a turnout quorum. If thresholds explained rigidity, Indonesia should be the most frequently amended of the three. It is not.

Existing scholarship offers two families of explanation. The first treats rigidity as a property of rules and seeks to measure it, whether by counting the veto points an amendment must pass or by modelling the veto players whose consent is required.³ The second treats rigidity as a property of culture, locating the decisive variable in shared attitudes towards the desirability of amendment, in social capital, or in elite gatekeeping.⁴ Indonesian scholarship, for its part, has concentrated on the substantive limits of the amending power, on the prospect of judicial review of amendments, and on the democratic quality of the 1999–2002 process.⁵ What remains undertheorised is the

¹ Donald S Lutz, 'Toward a Theory of Constitutional Amendment' (1994) 88 *American Political Science Review* 355; Tom Ginsburg and James Melton, 'Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty' (2015) 13 *International Journal of Constitutional Law* 686.

² Chaihark Hahm and Sung Ho Kim, *Making We the People: Democratic Constitutional Founding in Postwar Japan and South Korea* (Cambridge University Press 2015).

³ George Tsebelis, 'Constitutional Rigidity Matters: A Veto Players Approach' (2022) 52 *British Journal of Political Science* 280; George Tsebelis, *Changing the Rules: Constitutional Amendments in Democracies* (Cambridge University Press 2025).

⁴ Ginsburg and Melton (n 1); Danko Tarabar and Andrew T Young, 'What Constitutes a Constitutional Amendment Culture?' (2021) 66 *European Journal of Political Economy* 101953; William D Blake and others, 'Social Capital, Institutional Rules, and Constitutional Amendment Rates' (2024) 118 *American Political Science Review* 1075.

⁵ Mohammad Ibrahim, 'Pembatasan Kekuasaan Amendemen Konstitusi: Teori, Praktik di Beberapa Negara dan Relevansinya di Indonesia' [Limiting the Constitutional Amendment Power: Theory, Practice in Several Countries and Its Relevance in Indonesia] (2020) 17 *Jurnal Konstitusi* 558; Novendri M Nggilu and others, 'Rethinking Indonesian Constitutional Amendments: The Prospects and Perils of Judicial Review' (2024) 9 *Journal of Indonesian Legal Studies* 1027; Costantinus

legal layer that sits between the amendment clause and political behaviour: the statutes, standing orders, voting rules, agenda rules, referendum machinery, and drafting bodies without which no amendment rule can be operated at all.

This article terms that layer *amendment infrastructure* and contends that the rigidity of the three constitutions is best understood as *infrastructural rigidity*: a difficulty of change produced not by the height of the threshold but by the incompleteness, contestation, or disablement of the legal apparatus through which the threshold must be reached. The article addresses three questions. First, how do the formal amendment rules of Indonesia, the Philippines, and South Korea allocate the powers of proposal, deliberation, adoption, and ratification? Second, why have constitutions with such different thresholds converged on the same outcome of prolonged non-amendment? Third, what reconstruction of Indonesia's amendment infrastructure would make formal amendment possible without making it easy for incumbents to exploit? The thesis is that non-amendment in all three systems is a product of infrastructure rather than of numbers or of culture alone. The concept does not abandon rules-based analysis, but completes it. It does not reject the idea of amendment culture, but relocates part of what has been called culture into law that can be designed.

2. Method

The article is doctrinal and comparative. Its primary materials are the amendment clauses of the three constitutions, namely Article 37 of the 1945 Constitution of Indonesia, Article XVII of the 1987 Constitution of the Philippines, and Articles 128 to 130 of the 1987 Constitution of the Republic of Korea; the instruments that operate those clauses, namely the Standing Orders of the MPR, the Philippine Initiative and Referendum Act, and the Korean National Referendum Act and National Assembly Act; the New Order referendum instruments and their revocation; the decisions of the Supreme Court of the Philippines in *Santiago* and *Lambino* and the 2014 decision of the Constitutional Court of Korea on the National Referendum Act; and the parliamentary and executive records of amendment attempts. Indonesian instruments are cited from the legal documentation network of the Audit Board of the Republic of Indonesia (JDIH BPK) and the official website of the MPR, Philippine materials from the Supreme Court E-Library and the *Official Gazette*, and Korean statutes from the Korea Law Translation Center of the Korea Legislation Research Institute. Where the official record of a recent parliamentary event had not yet been published, the article relies on contemporaneous reports in national news media and identifies them as such in the footnotes. All online sources were last accessed on 18 September 2026.

Indonesian materials were read in the original Indonesian, and translations of their provisions and titles are the author's own. Philippine materials are in English.

Fatololon, 'Evaluasi Proses Amendemen Undang-Undang Dasar Tahun 1945: Perspektif Habermasian' [Evaluating the Amendment Process of the 1945 Constitution: A Habermasian Perspective] (2022) 19 Jurnal Konstitusi 819.

Korean statutes were read in the official English translations of the Korea Law Translation Center; Korean parliamentary events were read in English-language reporting and, in one instance, in a Korean-language report whose title is given in romanised transliteration with the author's translation. The 2014 decision of the Constitutional Court of Korea could not be consulted in full, and the account of it given here is attributed to the scholarship that reports it.

The period covered runs from the adoption of the Philippine and Korean Constitutions in 1987 to 18 September 2026. Within that period, the analysis includes every amendment attempt that reached a formal stage, whether a tabled proposal, a resolution adopted by one chamber, a petition lodged with the electoral authority, or the public announcement of an amendment bill, together with official decisions to pursue constitutional change through non-amendment routes. Each episode is analysed functionally, by asking at which stage of proposal, deliberation, adoption, or ratification it failed and whether the failure resulted from the threshold itself or from the law governing its operation. The analysis does not use quantitative indices of amendment difficulty, because the variables it identifies are precisely those that existing indices do not code.⁶ Its limits are those of a three-case comparison within one region: it can identify a mechanism, but it cannot establish how often that mechanism operates elsewhere.

3. Rules, Culture, and the Missing Middle

3.1 Rules and Their Measurement

The rules-based tradition begins from the intuition that the harder a constitution is to amend, the less often it will be amended. Lutz gave that intuition its classic form by constructing an index of amendment difficulty and correlating it with amendment rates across American state constitutions and national constitutions.⁷ Later work refined the index, distinguished between the number of actors and the size of the majorities they must assemble, and noted that the choice of denominator, whether members present or members in office, can change the practical height of a threshold considerably.⁸ Albert, in turn, reframed the field by showing that amendment rules are not a single threshold but an architecture of tiers, pathways, and entrenchments, some of which may themselves be amended.⁹

The most sustained recent defence of rules-based explanation comes from Tsebelis, who argues that rigidity understood as the number and preferences of veto players remains a necessary condition of low amendment frequency, and that cultural

⁶ Nuno Garoupa and Catarina Santos Botelho, 'Measuring Procedural and Substantial Amendment Rules: An Empirical Exploration' (2021) 22 German Law Journal 216.

⁷ Lutz (n 1).

⁸ Rosalind Dixon and Richard Holden, 'Constitutional Amendment Rules: The Denominator Problem' in Tom Ginsburg (ed), *Comparative Constitutional Design* (Cambridge University Press 2012).

⁹ Richard Albert, 'Amending Constitutional Amendment Rules' (2015) 13 International Journal of Constitutional Law 655; Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford University Press 2019).

accounts overstate their case.¹⁰ Yet the measurement literature has also revealed its own fragility. Garoupa and Santos Botelho show that established indices of procedural difficulty correlate only weakly with each other and with substantive limits on amendment, suggesting that scholars may be measuring different things under the same label.¹¹ The difficulty lies less in the indices than in their object. Every index codes the rule as written in the constitution. None codes whether the rule can be operated.

3.2 Culture and Its Limits

The cultural turn responded to that gap. Ginsburg and Melton argued that once a lagged amendment rate is taken into account, formal rigidity loses much of its explanatory power, and they proposed that societies develop shared attitudes towards amendment that persist across constitutional texts.¹² Subsequent work has sought to give content to that residual. Tarabar and Young link amendment rates to cultural dimensions such as uncertainty avoidance, while Blake and others show that social capital can offset the effect of rigid rules.¹³ Deem's study of the 2023 Australian referendum on a First Nations Voice cautions against inferring an incapacitating culture from a record of failure, since survey evidence showed majority support for particular reforms that nevertheless failed at the ballot, a gap he attributes largely to elite opposition and campaign dynamics.¹⁴

Culture is an indispensable corrective, but it is also a residual category. Whatever the rules do not explain tends to be assigned to it. In post-authoritarian settings the residual is especially large, because distrust of amendment is often a rational response to history rather than an inherited disposition: incumbents in all three jurisdictions once used amendment to extend their tenure or to concentrate power. The difficulty is that culture, so understood, is not designable. If non-amendment is cultural, constitutional reform can only wait for attitudes to change. If part of it is legal, reform can act.

3.3 Amendment Infrastructure and Infrastructural Rigidity

This article proposes that a third layer mediates between rules and culture. *Amendment infrastructure* denotes the body of sub-constitutional and constitutional-procedural law through which an amendment rule is operated. It has five components: the rules that govern who may initiate a proposal and how support is counted and withdrawn; the rules that govern the agenda once a proposal is tabled, including whether deliberation is confined to the provisions proposed; the voting modalities, including the denominator, the form of the ballot, and the treatment of abstention and boycott; the ratification machinery, including referendum legislation and the franchise; and the

¹⁰ Tsebelis, 'Constitutional Rigidity Matters' (n 3); Tsebelis, *Changing the Rules* (n 3).

¹¹ Garoupa and Santos Botelho (n 6).

¹² Ginsburg and Melton (n 1).

¹³ Tarabar and Young (n 4); Blake and others (n 4).

¹⁴ Jacob Deem, 'Incapacitating, or Something Else? Unpacking Australian Amendment Culture in the First Nations Voice Referendum' (2025) 23 *International Journal of Constitutional Law* 1113.

drafting and negotiation bodies, whether standing, ad hoc, or external, that convert political demand into constitutional text.

Amendment infrastructure is not identical to amendment culture. Culture concerns attitudes; infrastructure concerns law, and law can be enacted, repealed, struck down, or left unwritten. Nor is infrastructure identical to the amendment rule. The rule fixes the threshold; infrastructure determines whether the threshold is reachable, by whom, and at what political cost. *Infrastructural rigidity* accordingly denotes the difficulty of formal amendment that results from the incompleteness, contestation, or disablement of that infrastructure, independently of the numerical height of the threshold.

The concept yields three analytical expectations. Where infrastructure is incomplete, actors will defer amendment because they cannot predict or control its scope. Where infrastructure is contested, every attempt will be converted into litigation about the procedure rather than deliberation about the substance. Where infrastructure is disabled or easily obstructed, the formal threshold will be supplemented by an informal veto held by whichever actor controls the missing piece. Each expectation also has a corollary for informal change: when the formal route is infrastructurally blocked, demand for change migrates to statutes, conventions, and judicial interpretation.¹⁵ The following section tests these expectations against the three cases.

4. Three Post-Authoritarian Amendment Regimes

4.1 Indonesia: Low Thresholds, Unregulated Infrastructure

Article 37 of the 1945 Constitution, as amended in 2002, sets out a four-step rule. A proposal may be placed on the MPR's agenda if submitted by at least one-third of its members; it must be made in writing and must identify clearly the part to be amended together with the reasons; the session deciding the amendment must be attended by at least two-thirds of the members; and adoption requires the approval of fifty per cent plus one of all members.¹⁶ The form of the unitary state is excluded from amendment altogether.¹⁷ With the MPR composed of 580 members of the House of Representatives (DPR) and 152 members of the Regional Representative Council (DPD), a proposal now requires 244 signatures, a quorum of 488, and 367 votes for adoption. No referendum is required, no second vote is prescribed, and no waiting period applies.

By any rules-based index, this is among the least demanding amendment procedures in Asia. The absolute majority required for adoption is lower than the legislative supermajority demanded for amendment in most presidential democracies,

¹⁵ On the relationship between formal and informal change, see Mila Versteeg and Emily Zackin, 'Constitutions Unentrenched: Toward an Alternative Theory of Constitutional Design' (2016) 110 *American Political Science Review* 657; Xenophon Contiades and Alkmene Fotiadou, 'Models of Constitutional Change' in Xenophon Contiades (ed), *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and the USA* (Routledge 2013).

¹⁶ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia 1945] art 37(1)–(4); author's translation.

¹⁷ *ibid* art 37(5).

and the governing coalition formed after the 2024 election commands roughly four-fifths of the seats in the DPR alone. The 1999–2002 amendments were themselves adopted under the earlier and even simpler rule of original Article 37, which required only a two-thirds quorum and a two-thirds majority of those present.¹⁸ Indonesia's post-2002 immobility therefore cannot be explained by the height of the threshold.

The explanation lies in the infrastructure. Article 37 is not implemented by any statute. Its operation depends on the MPR Standing Orders, which the MPR adopts and amends by its own decision and which regulate the counting of signatures, the formation of an ad hoc committee, and the conduct of the plenary.¹⁹ The Standing Orders do not bind the plenary to the provisions identified in the proposal in a way that is judicially enforceable, do not require any period of public notice, and do not prescribe an independent drafting or consultative stage. The requirement in Article 37(2) that a proposal identify the provisions to be amended was intended to prevent comprehensive replacement, yet it is enforced only by the same body whose conduct it is meant to constrain.

The consequence is a persistent fear that any amendment session will become what Indonesian political discourse calls a *kotak Pandora*, a Pandora's box. The fear has been voiced in every recent episode, and it is structural rather than incidental: an assembly that is at once the proposer, the deliberator, and the final judge of its own agenda offers no external assurance that a limited amendment will remain limited.²⁰ From 2019 onwards, proposals for a limited amendment to restore state policy guidelines (*Pokok-Pokok Haluan Negara*, PPHN) were repeatedly shadowed by speculation that the same session might extend presidential terms or return presidential election to the MPR.²¹ In July 2022 the MPR's joint leadership meeting resolved to pursue the PPHN without amending the Constitution, precisely because a limited amendment could not be guaranteed to remain limited.²²

The pattern has continued under the 2024–2029 MPR. The Assembly's research body completed a first draft of the PPHN in August 2025, and in July 2026 the MPR leadership met both the Constitutional Court and the President to discuss a possible amendment; the President urged that the matter not be rushed, and no written proposal had been tabled by September 2026.²³ Meanwhile, a former MPR Speaker proposed four

¹⁸ Donald L Horowitz, *Constitutional Change and Democracy in Indonesia* (Cambridge University Press 2013); Denny Indrayana, *Indonesian Constitutional Reform 1999–2002: An Evaluation of Constitution-Making in Transition* (Kompas Book Publishing 2008).

¹⁹ Peraturan Majelis Permusyawaratan Rakyat Nomor 1 Tahun 2024 tentang Tata Tertib Majelis Permusyawaratan Rakyat Republik Indonesia [Regulation of the People's Consultative Assembly No 1 of 2024 on the Standing Orders of the People's Consultative Assembly of the Republic of Indonesia] (25 September 2024), repealing the Standing Orders of 2019.

²⁰ See generally Horowitz (n 18); Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Hart Publishing 2012).

²¹ Rizky Argama, 'Constitutional Amendment: Why Now?' (*Indonesia at Melbourne*, 19 October 2021) <<https://indonesiatmelbourne.unimelb.edu.au/constitutional-amendment-why-now/>> accessed 18 September 2026; M Wildan Humaidi and Inna Soffika Rahmadanti, 'Constitutional Design of State Policy as Guidelines on Indonesia's Presidential System Development Plan' (2023) 6 *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 61.

²² 'MPR: Rapat Gabungan sepakat bentuk panitia "ad hoc" PPHN' [MPR: Joint Meeting Agrees to Form an Ad Hoc Committee on the PPHN] (*ANTARA News*, 25 July 2022) <<https://www.antaranews.com/berita/3018001/mpr-rapat-gabungan-sepakat-bentuk-panitia-ad-hoc-pphn>> accessed 18 September 2026.

²³ 'MPR Completes First Draft of New Order-Style State Guidelines' *The Jakarta Post* (Jakarta, 15 August 2025); 'Amendemen UUD 1945 jadi salah satu bahasan pertemuan MPR dan MK' [Amendment of the 1945 Constitution among the Topics of the

routes to give the PPHN binding force without amendment: revising the Law on the Making of Legislation, revising the Law on the MPR, DPR, DPD and DPRD, replacing the National Development Planning System Law, or relying on constitutional convention.²⁴ The migration of amendment demand to sub-constitutional vehicles is the corollary that the concept of infrastructural rigidity predicts. Indonesia's rigidity is therefore not a wall but a fog: the threshold is low, but the path beyond it cannot be seen.

4.2 The Philippines: Plural Pathways, Contested Infrastructure

Article XVII of the 1987 Philippine Constitution provides three pathways. Congress may propose amendments or a revision upon a vote of three-fourths of all its members; a constitutional convention may do so, called by a two-thirds vote of all members of Congress or, by majority vote, submitted to the electorate; and the people may directly propose amendments through an initiative supported by a petition of at least twelve per cent of all registered voters, with every legislative district represented by at least three per cent.²⁵ The initiative is confined to amendments, may not be exercised more than once every five years, and depends on Congress to provide for its implementation. Every amendment or revision becomes valid only when ratified by a majority of votes cast in a plebiscite held between sixty and ninety days after approval.²⁶

On paper, plural pathways should reduce rigidity by allowing the people or a convention to bypass an unwilling legislature. In practice, each pathway carries an unresolved infrastructural question. The congressional pathway does not state whether the House of Representatives and the Senate vote jointly or separately. Elsewhere the Constitution specifies the mode, requiring Congress to vote jointly to revoke a proclamation of martial law and to vote separately to declare war, so the silence of Article XVII has been read in both directions.²⁷ Because the House has more than 300 members and the Senate 24, a joint vote would render the Senate's consent practically irrelevant. The question has never been authoritatively resolved.

The initiative pathway has been disabled by the absence of adequate implementing legislation. In *Santiago v Commission on Elections*, the Supreme Court held that the Initiative and Referendum Act was inadequate to implement the initiative on constitutional amendments, and restrained the Commission on Elections from entertaining petitions until Congress acted.²⁸ In *Lambino v Commission on Elections*, the Court rejected a later initiative because the signatories had not been shown the full text of the proposal and because the proposed shift to a parliamentary system was a revision

Meeting between the MPR and the Constitutional Court] (*ANTARA News*, 8 July 2026) <<https://www.antaranews.com/berita/5641200/amendemen-uud-1945-jadi-salah-satu-bahasan-pertemuan-mpr-dan-mk>> accessed 18 September 2026.

²⁴ 'Bamsoet Dukung PPHN Segera Diberlakukan, Beri Opsi Sejumlah Payung Hukum' [Bamsoet Supports Prompt Enactment of the PPHN and Offers Several Legal Vehicles] (*detikNews*, 16 September 2026) <<https://news.detik.com/berita/d-8665236>> accessed 18 September 2026.

²⁵ Constitution of the Republic of the Philippines 1987, art XVII ss 1–3.

²⁶ *ibid* art XVII s 4.

²⁷ *ibid* art VI s 23(1), art VII s 18.

²⁸ *Santiago v Commission on Elections* GR No 127325, 270 SCRA 106 (Supreme Court of the Philippines, 19 March 1997); Republic Act No 6735 (The Initiative and Referendum Act) 1989.

beyond the reach of an initiative; the Justices divided on whether *Santiago* remained controlling.²⁹ In January 2024, a signature campaign sponsored by allies of the House leadership proposed to amend Article XVII itself to provide for joint voting, and the Commission on Elections suspended all proceedings on the initiative amid allegations that signatures had been purchased.³⁰

The congressional pathway fared no better. In March 2024 the House adopted Resolution of Both Houses No 7 by 288 votes to 8, proposing to insert the phrase ‘unless otherwise provided by law’ into the economic provisions restricting foreign ownership; the Senate did not act on its counterpart resolution.³¹ The drafting technique is itself revealing. By authorising Congress to relax constitutional restrictions by statute, the proposal would have lowered future rigidity through deconstitutionalisation rather than through substantive change. Opponents read it, accordingly, as a first step rather than a final settlement. The Philippine case shows that the multiplication of pathways does not reduce rigidity when each pathway is infrastructurally contested. It converts amendment politics into procedural litigation and procedural suspicion.³²

4.3 South Korea: Double Locks, Disabled Infrastructure

The Korean Constitution of 1987 imposes what may be called a double lock. A proposal may be introduced by a majority of the members of the National Assembly or by the President; it must be publicly announced by the President for at least twenty days; the Assembly must decide within sixty days of the announcement by a two-thirds majority of its members in office; and the proposal must then be approved within thirty days in a national referendum by a majority of the votes cast, with more than half of eligible voters participating.³³ An amendment extending the President’s term or permitting re-election does not apply to the President in office at the time of the proposal.³⁴ This last provision is a direct response to the term-extension amendments of 1954, 1969, and 1972.³⁵

The double lock is demanding, but Korea’s post-1987 record cannot be attributed to the threshold alone, because the infrastructure required to reach it was disabled for more than a decade. In 2014 the Constitutional Court held that the National Referendum Act’s restriction of the vote to registered residents unconstitutionally excluded Korean

²⁹ *Lambino v Commission on Elections* GR No 174153, 505 SCRA 160 (Supreme Court of the Philippines, 25 October 2006).

³⁰ Paolo Tamase, ‘Unconstitutional Moments: The 2024 Attempts to Change the Philippine Constitution’ (*ConstitutionNet*, 29 April 2024) <<https://constitutionnet.org/news/voices/unconstitutional-moments-2024-attempts-change-philippine-constitution>> accessed 18 September 2026.

³¹ ‘Economic Cha-cha Gets Final House OK’ *The Philippine Star* (Manila, 21 March 2024).

³² Michael Henry Yusingco, ‘Why Has the Constitution of the Philippines Endured for 31 Years Without Amendment?’ (*I-CONnect*, 4 October 2018) <<https://www.iconnectblog.com/why-has-the-constitution-of-the-philippines-endured-for-31-years-without-amendment/>> accessed 18 September 2026; Dante Gatmaytan, ‘The Latest Attempt at Charter Change in the Philippines: Prospects and Concerns’ (*ConstitutionNet*, 31 March 2023) <<https://constitutionnet.org/news/latest-attempt-charter-change-philippines-prospects-and-concerns>> accessed 18 September 2026.

³³ Constitution of the Republic of Korea 1987, arts 128–130.

³⁴ *ibid* art 128(2).

³⁵ Hahm and Kim (n 2).

nationals living abroad, and ordered the provision to be revised by the end of 2015.³⁶ The National Assembly did not revise it. From 2016, therefore, no national referendum could lawfully be held, and no amendment could be ratified, whatever majority it commanded. When President Moon Jae-in submitted a comprehensive amendment proposal in March 2018, the deadline for revising the Referendum Act in time for a referendum alongside the June local elections passed without action.³⁷ On 24 May 2018 only 114 members cast ballots, far short of the 192 required, and the vote was declared void.³⁸

The infrastructure was repaired only in 2026. On 1 March 2026 the National Assembly passed a comprehensive revision of the National Referendum Act guaranteeing overseas voting, with the ruling bloc supplying the majority.³⁹ In early April 2026, 187 members of the Democratic Party and five smaller parties jointly proposed an amendment adding the 1979 Busan-Masan and 1980 Gwangju democratic uprisings to the Preamble and requiring parliamentary approval of any martial law declaration within forty-eight hours, a direct response to the declaration of December 2024.⁴⁰ The referendum was planned for the local elections of 3 June 2026. On 7 May 2026, however, the People Power Party boycotted the vote; only 178 members voted against a requirement of 191, two-thirds of the 286 members then in office, and the Speaker declined to resubmit the proposal after the opposition threatened a filibuster.⁴¹

The 2018 and 2026 episodes reveal the same infrastructural mechanism. Because the threshold is calculated on members in office rather than on members voting, and because constitutional amendments are decided by a recorded vote, abstention and boycott have the same effect as a negative vote while carrying a lower political cost.⁴² A disciplined minority holding more than one-third of the seats need not defeat an amendment; it need only be absent. Korea's rigidity is therefore not the height of the lock but the ownership of the key.

5. Comparative Analysis

5.1 Thresholds Do Not Explain Non-Amendment

Table 1 sets the three regimes side by side. Read by threshold alone, the table predicts a clear ranking: Indonesia should be the most flexible, the Philippines intermediate, and

³⁶ Constitutional Court of Korea, 2009Hun-Ma256 and 2010Hun-Ma394 (consolidated), 24 July 2014. The decision could not be consulted in full; the account given here follows Jongcheol Kim, 'Presidential Proposal for Constitutional Revision in South Korea: Unlikely to be Passed but Significant Step Forward' (*ConstitutionNet*, 16 May 2018) <<https://constitutionnet.org/news/presidential-proposal-constitutional-revision-south-korea-unlikely-be-passed-significant-step>> accessed 18 September 2026.

³⁷ Kim (n 36).

³⁸ 'Opposition Scuttles Moon's Constitution Amendment Plan' *The Korea Herald* (Seoul, 24 May 2018).

³⁹ "Jaeoegungmin tupyō" gungmintupyobeop gaejeongan, beomyeogwon judo bonhoeui tonggwa' ['Overseas Voting' Amendment to the National Referendum Act Passes the Plenary, Led by the Ruling Bloc] (*News1*, 1 March 2026) <<https://www.news1.kr/politics/assembly/6086897>> accessed 18 September 2026.

⁴⁰ 'Cabinet Approves Motion to Amend Parts of the Constitution' *The Korea Times* (Seoul, 6 April 2026).

⁴¹ 'Constitutional Amendment Fails as Opposition Boycotts Vote' *Seoul Economic Daily* (Seoul, 7 May 2026); 'Assembly Speaker Won't Put Martial Law Amendment Proposal to a Vote, Blames PPP for Threatened Filibuster' *Korea JoongAng Daily* (Seoul, 8 May 2026).

⁴² National Assembly Act (Republic of Korea), art 112(4).

South Korea the most rigid. Read by outcome, the ranking disappears. All three constitutions have remained formally unchanged for more than two decades, and in each case the proximate cause of failure has lain in the infrastructure rather than in the threshold.

Table 1. Formal amendment regimes and their infrastructure in Indonesia, the Philippines, and South Korea

Feature	Indonesia (1945 Constitution, art 37)	Philippines (1987 Constitution, art XVII)	South Korea (1987 Constitution, arts 128–130)
Power of proposal	One-third of MPR members (244 of 732)	Congress (three-fourths of all members); constitutional convention; people's initiative (12% of registered voters, 3% per district)	Majority of National Assembly members, or the President
Adoption	Attendance of two-thirds of members; approval by 50% plus one of all members	Three-fourths of all members of Congress; joint or separate voting unresolved	Two-thirds of members in office, by recorded vote, within 60 days of a public notice of at least 20 days
Ratification	None	Plebiscite; majority of votes cast, 60–90 days after approval	Referendum within 30 days; majority of votes cast, turnout above half of the electorate
Special limits	Form of the unitary state unamendable	Initiative confined to amendments; not more than once every five years	Term-extension or re-election amendments inapplicable to the incumbent President
Formal amendments under current text	Four (1999–2002); none since 2002	None since 1987	None since 1987
Principal infrastructural obstacle	No implementing statute; no agenda lock; no support-fixing rule; no standing drafting body	Unresolved voting mode; initiative law held inadequate in <i>Santiago</i> (1997)	Referendum law inoperative 2016–2026; boycott effective under a members-in-office threshold
Infrastructural type	<i>Unregulated</i>	<i>Contested</i>	<i>Disabled, then obstructed</i>

Source: author's compilation from the constitutional texts, implementing legislation, and decisions.

The comparison does not suggest that thresholds are irrelevant. Korea's two-thirds requirement is what makes a boycott by one-third of the Assembly decisive, and the Philippine three-fourths requirement is what makes the question of joint or separate voting so consequential. The point is rather that thresholds become operative only through infrastructure. A threshold is a number; infrastructure decides who is counted, when, how, and with what consequence for absence. Rules-based indices that code only the number will systematically misclassify systems in which the infrastructure is incomplete or disabled.⁴³

⁴³ Garoupa and Santos Botelho (n 6); Dixon and Holden (n 8).

5.2 Referendums and Ratification: Presence, Absence, and Dormancy

The three cases also complicate the conventional view that referendums add rigidity. Indonesia has no amendment referendum, yet it is no more flexible than its neighbours. The absence is not accidental. The New Order regime enacted a referendum requirement for any amendment in 1983 and 1985, designed less to empower voters than to make the 1945 Constitution practically unamendable; the requirement was revoked in 1998 and 1999 as part of the opening towards reform.⁴⁴ Indonesian constitutional memory therefore associates the referendum with authoritarian entrenchment rather than with popular sovereignty, a reversal of its connotation in the Philippines and Korea.

In the Philippines, the plebiscite has never been tested under the 1987 Constitution because no proposal has survived the earlier stages; its principal effect has been anticipatory, since public opinion polls showing large majorities against charter change have deterred legislators from pressing proposals to a vote.⁴⁵ In Korea, the referendum was not merely a hurdle but, from 2016 to 2026, an impossibility. That dormancy is the clearest illustration of infrastructural rigidity in comparative constitutional law: a constitution whose amendment rule could not be satisfied by any majority because the statute implementing one of its steps had been invalidated and not replaced.⁴⁶ The referendum, in short, shapes rigidity through its infrastructure and its memory rather than through its mere presence in the text.⁴⁷

5.3 Drafting and Negotiation: From Elite Pact to Procedural Vacuum

The comparison becomes sharper when attention shifts from adoption to drafting. Each of the three settlements was itself produced by a negotiation infrastructure that worked. Korea's 1987 Constitution was drafted through an eight-member negotiation between the ruling and opposition parties, adopted by the Assembly, and ratified by referendum within weeks.⁴⁸ The Philippine Constitution was drafted by an appointed Constitutional Commission in 1986 and ratified in February 1987. Indonesia's amendments were drafted over four annual sessions by an ad hoc committee of the MPR's working body, disciplined by five basic agreements: the Preamble would not be changed, the unitary state would be retained, the presidential system would be strengthened, the normative content of the Elucidation would be moved into the articles, and amendment would proceed by addendum.⁴⁹

⁴⁴ Ketetapan MPR Nomor IV/MPR/1983 tentang Referendum [MPR Decree No IV/MPR/1983 on Referendum]; Undang-Undang Nomor 5 Tahun 1985 tentang Referendum [Law No 5 of 1985 on Referendum]; Ketetapan MPR Nomor VIII/MPR/1998 tentang Pencabutan Ketetapan MPR Nomor IV/MPR/1983 tentang Referendum [MPR Decree No VIII/MPR/1998 Revoking MPR Decree No IV/MPR/1983 on Referendum]; Undang-Undang Nomor 6 Tahun 1999 tentang Pencabutan Undang-Undang Nomor 5 Tahun 1985 tentang Referendum [Law No 6 of 1999 Revoking Law No 5 of 1985 on Referendum].

⁴⁵ Tamase (n 30).

⁴⁶ 2009Hun-Ma256 (n 36); News1 (n 39).

⁴⁷ Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford University Press 2012).

⁴⁸ Hahm and Kim (n 2).

⁴⁹ Indrayana (n 18); Horowitz (n 18).

What distinguishes the transitional moment from the post-transitional period is not political will but procedural architecture. In each case the founding negotiation had a defined agenda, a bounded set of negotiators, and a shared deadline. After the transition, those features were not institutionalised. Indonesia established a Constitutional Commission in 2002 to review the amendments, but its 2004 report was never acted upon and no successor body exists.⁵⁰ The Philippines has convened consultative bodies ad hoc, most recently under President Duterte, without any rule linking their drafts to congressional deliberation. Korea has repeatedly formed special parliamentary committees on constitutional reform, yet the sixty-day clock after public announcement compresses negotiation into a window too short for cross-party bargaining and too visible for compromise.⁵¹ The movement in all three is from elite pact to procedural vacuum.

The drafting of the proposals themselves reveals a related pattern. The Philippine ‘unless otherwise provided by law’ formula, the Indonesian debate over whether the PPHN should be placed in the Constitution or in a statute, and the Korean choice in 2026 to confine the amendment to two items presented as consensual all reflect the same strategic calculation: proponents minimise the text in order to minimise suspicion. Minimal drafting is rational under infrastructural rigidity, but it is also a symptom of it. Where the infrastructure cannot guarantee that a limited amendment will remain limited, or that a minimal amendment will not be read as the first slice of a larger design, even modest proposals attract maximal resistance.⁵²

5.4 Amendment Culture Reconsidered

The cultural account is not displaced by these findings, but it is disaggregated. The three cases display three distinct cultural postures, each anchored in infrastructure. Indonesia’s posture may be called *anticipatory*: actors defer amendment not because they oppose change but because they cannot predict its scope. The Philippine posture is *suspicious*: every proposal is read through the history of term-extension manoeuvres and the procedural shortcuts that accompany them. The Korean posture is *hostage*: broad public support for particular amendments coexists with a procedure that allows a minority to withhold the key.⁵³

In each case, the cultural posture tracks an identifiable infrastructural feature: the absence of agenda confinement in Indonesia, the unresolved voting mode and inadequate initiative law in the Philippines, and the combination of an absolute denominator and recorded voting in Korea. This correspondence suggests that part of what comparative scholarship has classified as amendment culture is better understood

⁵⁰ Ketetapan MPR Nomor I/MPR/2002 tentang Pembentukan Komisi Konstitusi [MPR Decree No I/MPR/2002 on the Establishment of a Constitutional Commission].

⁵¹ Jong Eun Lee, ‘The Challenges of Reforming South Korea’s Constitution’ (*East Asia Forum*, 4 August 2025) <<https://eastasiaforum.org/2025/08/04/the-challenges-of-reforming-south-koreas-constitution/>> accessed 18 September 2026.

⁵² Tamar Hostovsky Brandes and Yaniv Roznai, ‘When the First Brick Falls of the Fortress of Democracy: Dealing with the First Slice of the “Salami Tactic” for Eroding Democracy’ (2024) 19 *Asian Journal of Comparative Law* 535.

⁵³ Compare Deem (n 14) on the gap between public support and referendum outcomes.

as a rational response to infrastructure. Culture is not the opposite of law; it is, in part, law's shadow. The implication for design is significant. A culture cannot be legislated, but an infrastructure can, and changing the infrastructure may change the culture that it has produced.⁵⁴

The legitimacy literature supports the same conclusion from a different direction. Recent work on the legitimacy of amendments emphasises that legality alone does not settle whether an amendment is legitimate, and that procedural qualities such as inclusiveness, deliberation, and freedom from incumbent self-dealing supply much of the external standard.⁵⁵ Amendment infrastructure is where those qualities are either secured or left to chance. Where it is absent, formal legality becomes the only available standard, and actors who distrust one another rationally refuse to enter a process whose legitimacy they cannot foresee.⁵⁶

6. Reconstructing Indonesia's Amendment Infrastructure

If Indonesia's rigidity is infrastructural, the remedy is not to lower thresholds that are already low, nor to add a referendum that Indonesian constitutional memory associates with authoritarian entrenchment. The remedy is to build the missing infrastructure. The comparative cases supply both models and warnings. Korea offers a model of public notice and of incumbent disqualification, but also a warning about attendance-based thresholds and dormant ratification machinery. The Philippines offers a warning about pathways whose voting mode and implementing law are left unresolved. Indonesia's own 1999–2002 experience offers a model of sequenced, agenda-disciplined negotiation that was never institutionalised. Five elements follow.

The first is an *agenda lock*. The scope of an amendment session should be fixed at the moment a proposal is verified as meeting the one-third threshold, so that the plenary may adopt, reject, or narrow the proposed text but may not extend it to provisions not listed. Any extension should require a new proposal and a new cycle. This element answers the Pandora's box objection directly, converting Article 37(2) from an exhortation into an operative rule. Its enforcement should rest on a narrowly procedural review by the Constitutional Court, confined to whether the adopted text falls within the verified proposal. Existing Indonesian scholarship has made the case for judicial review of amendments on substantive grounds; the agenda lock requires only its procedural and least contentious form.⁵⁷

⁵⁴ Blake and others (n 4); Tsebelis, *Changing the Rules* (n 3).

⁵⁵ Jaclyn L Neo and Raeesa Vakil, 'A Legality and Legitimacy Framework for Analysing (Unconstitutional) Constitutional Amendments' (2024) 19 *Asian Journal of Comparative Law* 401; Francisca Pou Giménez, 'Assessing Constitutional Amendment: Internal and External Standards of Legitimacy in Times of Autocratic Retrogression' (2024) 19 *Asian Journal of Comparative Law* 417.

⁵⁶ Adem Kassie Abebe, 'The (Il)legitimacy of Constitutional Amendments in Africa and Democratic Backsliding' (2024) 19 *Asian Journal of Comparative Law* 473; David Landau and Rosalind Dixon, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (Oxford University Press 2021).

⁵⁷ Nggili and others, 'Rethinking Indonesian Constitutional Amendments' (n 5); Novendri M Nggili and others, 'The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards' (2025) 6 *Journal of Law and Legal Reform* 659; Arifin Tumuhulawa and others, 'Judicial Review of Constitutional Amendments: Comparative Experiences and Their Relevance to Indonesia' (2025) 8 *Jambe Law Journal* 611.

The second is a *support-fixing rule*. Signatures supporting a proposal should be verified and fixed upon submission, with withdrawal permitted only during a short verification period. Without such a rule, the one-third threshold can be satisfied and unsatisfied at the discretion of party leaderships, and the tabling of a proposal becomes an instrument of intra-coalition bargaining rather than a constitutional act.

The third is a *deliberative interval* combined with an independent drafting stage. A verified proposal should be published in full, followed by a fixed period of not less than six months in which a standing, non-partisan constitutional commission, successor to the commission established in 2002, holds public hearings across the provinces and reports to the MPR on the text, its alternatives, and its consequences. The Korean requirement of public announcement shows the value of notice, while the brevity of the Korean clock shows the cost of compressing negotiation. The Indonesian interval should therefore be longer and should be accompanied by a drafting body whose report the MPR is obliged to consider, even if not to follow.⁵⁸

The fourth is *sequenced adoption across two annual sessions*. An amendment should be approved in principle at one annual session of the MPR and adopted in final form at the next. The requirement formalises the practice that made the 1999–2002 amendments possible, in which the MPR proceeded incrementally from one annual session to the next, allowing each stage to be tested before the next was undertaken. Unlike an intervening-election requirement, sequencing within one parliamentary term does not postpone reform for years, but it does deny any coalition the ability to amend the Constitution in a single sitting.

The fifth is an *incumbent-disqualification clause* on the Korean model, providing that any amendment concerning the term, re-election, or method of election of the President and Vice-President, or the term of members of the MPR, shall not apply to those holding office when the amendment is proposed.⁵⁹ Such a clause would remove the principal source of suspicion that has shadowed every Indonesian amendment debate since 2019. It would also alter the incentives of proponents, since an amendment that cannot benefit its authors is more likely to be proposed for reasons that are public rather than personal.

Two further safeguards follow from the Korean and Philippine warnings. Because Article 37(3) requires the attendance of two-thirds of the members, a boycott by slightly more than one-third can block adoption in Indonesia as it did in Korea. Pending any amendment of Article 37 itself, the Standing Orders should require a recorded vote and should record every member's attendance or absence in the official minutes, so that obstruction carries a visible political cost. And because the MPR contains both DPR and DPD members, the rules should specify whether amendments to the provisions on regional government and on the DPD require the concurrence of a majority of DPD

⁵⁸ Fatlolon (n 5).

⁵⁹ Constitution of the Republic of Korea 1987, art 128(2); compare Abebe (n 56) on term-limit amendments.

members, a form of tiered consent that the Philippine experience shows is better settled in advance than litigated afterwards.⁶⁰

Three objections may be anticipated. The first is that a statute cannot bind the MPR in the exercise of its constituent power. Yet the proposed rules regulate the manner rather than the substance of amendment, and both Korea and the Philippines rely on ordinary legislation to operate their amendment clauses. The more durable solution is for the first amendment adopted under the new infrastructure to be a procedural amendment to Article 37 that constitutionalises it, a sequence that would allow trust to be built before substantive change is attempted. The second objection is that additional procedure will add rigidity. It will add steps, but it will reduce uncertainty, and the Indonesian problem is uncertainty rather than difficulty. The third is that judicial involvement will politicise the Constitutional Court. The proposed review is confined to whether the MPR has stayed within its own verified agenda, a question of record rather than of constitutional identity. Accordingly, the reconstruction moves Indonesia from an amendment regime that is easy in law but impossible in practice to one that is demanding in procedure but predictable in operation.

7. Conclusion

This article has argued that the rigidity of the Indonesian, Philippine, and Korean constitutions is infrastructural rather than numerical. In answering the research questions, the article concludes, first, that the three systems allocate the powers of proposal, adoption, and ratification very differently: Indonesia concentrates all of them in a single assembly with low thresholds and no referendum, the Philippines disperses them across three pathways and a mandatory plebiscite, and Korea locks them behind a parliamentary supermajority and a referendum with a turnout quorum. Second, the convergence of these different systems on prolonged non-amendment is explained by the condition of their amendment infrastructure: unregulated in Indonesia, contested in the Philippines, and disabled and then obstructed in Korea. Third, Indonesia's amendment regime can be reconstructed through an agenda lock, a support-fixing rule, a deliberative interval with an independent drafting stage, sequenced adoption, an incumbent-disqualification clause, and recorded voting, without lowering its thresholds and without importing a referendum.

The contribution of the concept of infrastructural rigidity is to connect two literatures that have developed largely in parallel. Rules-based accounts are right that amendment procedures matter, but they code only the numbers. Culture-based accounts are right that numbers do not explain outcomes, but they risk assigning to culture what is in fact produced by law. The concept does not deny either account, but places between them a layer that is legal, observable, and designable. It also explains why demand for change that is blocked at the formal level migrates to statutes,

⁶⁰ Albert, 'Amending Constitutional Amendment Rules' (n 9).

conventions, and courts, as the Indonesian search for sub-constitutional vehicles for the PPHN illustrates.

The analysis has limits. It rests on three cases from one region, and the concept of amendment infrastructure should be tested against systems in which infrastructure is complete but amendment remains rare. The Korean episode of 2026 is also recent, and its full consequences for Korean amendment politics remain to be seen. Nevertheless, the three cases show that a constitution's capacity for formal change depends not only on the threshold written into its text but on the law through which that threshold must be reached. For Indonesia, the lesson is that the next amendment, if it is to be legitimate, should begin not with the substance of change but with the infrastructure of change. In that sense, the amendment clause is neither a wall to be lowered nor a door to be forced; it becomes a road that has to be built before it can be travelled.

Statements

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