

Constitutionality Of Dpr-Dprd From Independent Candidates

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ABSTRACT

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Electing and being elected is the right of each citizen which is guaranteed by the constitution of the Republic of Indonesia. However General Elections policy only regulates Political Parties which become the participants of the election who have the rights to nominate the member of DPR-DPRD. This regulation obligates the citizens' rights to associate to a Political Party and does not organize their rights of electing or being elected independently in a representative system. This article is trying to conduct a study to the theory, principle and norms on the Representative system and also examining the principal assumption of UUD 1945 (the Constitution of 1945) related to the potency of independent candidates in the DPR-DPRD elections, elaborating the constitutional, juridical, political, and cultural obstacles to an independent candidate in the contestation of legislative election. By using juridical, conceptual and comparative analytic approaches, then this study results in a recommendation on two efforts of political supremacy through constitutional amendment or legal supremacy effort through judicial review of the Constitution of 1945 Article 22E paragraph (3) by relying on Article 28D paragraph (3) and Article 28 Junto Article 28E paragraph (3). Therefore, the election system of DPR-DPRD is carried out through two lines, political party line and independent line.



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Introduction

Representative system is one of the pillars of democracy which has been discussed in the review of *Trias Politica* theory, which dividing the state power into executive, legislative, and judicative power. This division has an aim to ensure the balance and the state of mutual control among state institutions are existed.¹ Representative system is stated in the fourth fundamental principle of Pancasila, "Democracy guided by wisdom in deliberation of consultation", which also becomes the Preamble of the Constitution of 1945. Parliamentary power is the most important part in the principle of popular sovereignty which gives a space to people's rights for being elected and elect their role in state and governance. Through the representative institutions, people can monitor the government implementation, and create a space for public participation in the political process.² Personal composition in Parliamentary institution consists of 580 members of DPR which is in fact the members of political parties and 152 members of DPD of the result of 2024 General Elections. The members of DPR represents political parties because they were nominated by the political parties whom then are elected by the people. Therefore, the objective reality that the elements in Indonesian Parliament is political party domination. Political party domination in the

¹ Jimly Asshiddiqie. *Hukum Tata Negara dan Pilar-Pilar Demokrasi*. Konstitusi Press. Year 2005. 31 accessed March 23 2025, <http://lib.ui.ac.id/detail?id=128365>.

² Satriya Nugraha. *Legislatif dan Demokratisasi: Peranan Legislatif dalam Membangun Demokrasi di Indonesia*. Morality Jurnal Ilmu Hukum 9 No. 2 (December 31 2023)

Parliament is due to the General Election system which only regulates the political parties as the participants of DPR-DPRD Elections. But on the other side, people are shown a reality of the decline of democracy which is caused by the poor performance of political parties. These phenomena related to the decline of democracy include the domination of party oligarch, political standardization based on money not competence, money politics in General Elections, elite conspiracy in a number of corruption practices.

Some researchers and writers of politics and state governance who are concentrating on this study are Mudhoffir on his writing entitled "*Oligarki: Teori dan Kritik*"³, Syauket with his works entitled "*Membangun Dinasti Politik-Oligarki yang Korup (Fenomena Pilkada Serentak 2020)*"⁴, Michels on his works entitled "*Partai Politik: Kecenderungan Oligarkis dalam Birokrasi*"⁵, and Hamzah in his works entitled "*Oligarki dan Totalitarianisme Baru*"⁶. Political parties occupied the lowest position in the survey of Indonesian Political Indicator on January 2025, which has placed political parties as institutions with a low level of trust, which achieves 62%.⁷ This reality is generally appropriate to be considered as a critique as well as a consciousness builder that political party regime needs a radical improvement by not giving democratic affairs totally to political party.

The members of people representative who are nominated through independent path has been implemented for a long time in a number of democratic countries. General Elections in United States regulates independent candidates in congressional elections (Senate and House of Representatives). India allows independent candidates to run for *Lok Sabha* and *Vidhan Sabha* elections. General Elections system of Australia allows independent candidates to compete in the elections of House of Representatives and Senate as well as Canada, France, Germany, Philippines, and Afghanistan. In general, those countries are having reason to strengthen the democracy and direct participation, to reduce political party domination, to increase the quality of representatives, to customize the character of political culture, and to suppress money politics.

The practice of legislative member candidacy in Indonesia is only available through one path that is political party. Article 22E paragraph (3) of the Constitution of the Republic of Indonesia states that "The participants in the general election for the election of the members of the DPR and the members of DPRDs are political parties". Political party's right in this article is positive rights in nature, not natural rights. The claim upon this rights currently has been questioned along with the attitude of political party which implicates the opposite. This also leads to a political hypothesis on the potency of the participation of DPR-DPRD Election from independent path. This discourse becomes increasingly relevant in political reformation context which has aims to increase the quality of democracy and to purify the system of people's representatives, which is based on the natural rights in accordance to Article 28E paragraph (3), Article 27 paragraph (1), and a re-debate on the meaning of Article 22E paragraph (1).

The elimination of independent path in DPR-DPRDs election is also worth to be questioned principally and theoretically, including: *Firstly*, the reason of party system in the constitution which is applicable in exclusive determinism is imperative absolute in nature. *Secondly*, the system of presidential which is connected through the presence of political parties actually reduces the function of controlling and criticizing because it is trapped on a singular interest and distorts the principle of political accountability. *Thirdly*, democracy which is managed by political party does not produce interest integration. Otherwise, it is managed by consensus, flexibly and compromisingly in solving some problems and the access to state resources leads to oligarchy designation. It starts from epistemic moderation concept of thought by critical dialectic and reflective synthetic against two large groups which divides constitutional law scholars and political science in this era. There is reductionism of democracy on political party, but at the same time a number of democratic countries in the West have applied the mechanism of the House of Representatives general election through independent path or non-political party. This study is examining the *ratio legis* of

³ Oligarchy is a form of government in which power rests with a small number of elites. In Indonesia oligarchy has started from era colonial until it has developed into millennial oligarchy which influences the political actors and political system through the facilitation of political recruitment, coalition, election campaign, and policy. (Abdil Mughis Mudhoffir and Coen Husain Pontoh. *Oligarki: Teori dan Kritik*. Penerbit MARjin Kiri. Year 2020).

⁴ Amalia Syauket, *Membangun Dinasti Politik-Oligarki yang Korup (Fenomena Pilkada Serentak 2020)*. 2021.

⁵ Robert Michels. *Partai Politik: Kecenderungan Oligarkis dalam Birokrasi*. Rajawali. Year 1984.

⁶ Guntur Hamzah. *Oligarki dan Totalitarianisme Baru*. Jakarta. Penerbit Gramedia. Year 2023.

⁷ <https://www.liputan6.com/news/read/4928755/survei-parpol-jadi-lembaga-paling-tidak-dipercaya-dan-tni-paling-dipercaya-publik>.

constitution of philosophic logic which becomes the basis for the existence of a such norm in the constitution related to people's original rights that is free to associate or not to associate (independent) and an obligation to associate through political parties. This study is formulating the problem through a question whether there is constitutional rights and human rights exist upon the enactment of the independent representative election system and how is political system engineering and administrative law to the existence of political party's authority. By philosophical, conceptual and comparative approach, it is analyzed inductively quantitative in order to get the appropriate answer.

Method

This study employs a normative legal research method with a prescriptive analytical orientation to examine the constitutional issues surrounding the nomination of DPR–DPRD members through political parties and the potential recognition of independent candidates within Indonesia's representative democratic system. The approaches used in this research include the statutory approach to examine constitutional and legislative norms, the conceptual approach to construct theoretical frameworks on democracy and constitutional rights, the comparative approach to analyze practices in other democratic countries, and the philosophical approach to assess normative legitimacy based on principles of justice, liberty, and popular sovereignty.

The legal materials consist of primary sources, including the 1945 Constitution of the Republic of Indonesia and election laws; secondary sources, such as legal literature and scholarly journals; and tertiary sources, including legal dictionaries and other supporting references. The collection of legal materials is conducted through library research by examining statutory regulations, court decisions, academic literature, and relevant documents related to constitutional issues and the legislative electoral system. The analysis is carried out qualitatively using a normative-argumentative method, involving legal interpretation, identification of normative conflicts, application of the hierarchy of norms theory, and legal reasoning to formulate prescriptive constitutional solutions. This method is capable of addressing the constitutional basis for independent candidates and formulating legal system engineering in accordance with democratic principles and human rights.

Results and Discussion

1. Some obstacles and Opportunities of the DPR-DPRDs Candidate Arrangement through Independent Path

Article 19 and 22E paragraph (3) of the 1945 Constitution of the Republic Indonesia regulates on General Elections to elect the People's Representative Council (National) and the Regional People's Representative Council, whose participants are political parties. This foothold is then followed by Law Number 7 of 2017 on General Elections, which consists of three main points: *The first*, the system of DPR-DPRD election uses an open proportional system, where the electors can elect the desired candidate of legislative members directly from the list provided by the political parties.⁸ The seat acquisition determination is carried out by *Sainte-Lague* method. *The second*, the parliamentary threshold is that political parties should fulfill the parliamentary threshold of 4% from the total oh the national valid votes in order to obtain seats in DPR. *The third*, the addition of DPR seats into 575, which is from 80 electoral districts. The Indonesian Constitution does not give any other chances, although there are some special articles inside which provide the rights of independent candidate. Some obstacles which are faced by independent candidates are:

- a. Constitutional obstacles are sourced from an article of the 1945 Constitution of the Republic of Indonesia, Article 22E paragraph (3) "The participants in the general election for the election of the members of DPR and the members DPRD are political parties". This text is exclusive to interpretation as well as mono-perspective. In logocentrism perspective, this text shows a closed

⁸ Some critiques to this arrangement are on the rules of people (the voters) elect individual (the candidate) which has been determined by the political parties. This kind of norm can not be referred as opened proportional, but closed proportional. The form of this closeness is when people are electing some candidates who are not provided by the people but provided by the political parties. This fact has been generally understood that people are electing the political parties' choice. Some critiques to this system reality are that people's right to vote is manipulated by a system which gives a hegemony opportunity by political parties and restricts the candidates' rights who are not affiliated to political parties.

proportion because political party as the legal subject institution serves as the participant of election, then the people elect the party's choice, thus the principle of direct and free is obstructed by the participation of political party. This kind of case is contradictory to the principle of the freedom of expression, political pluralism, and a fair opportunity for individual to use his right as the voter and being elected.

- b. Juridical obstacles can be seen in Article 245, 182, 240 Act Number 7 of 2017 on General Election. the substance of this part is that the participant of General Election is only political parties and the candidacy requirements should involve political parties. Political party in this context has to act as a Self-Regulatory Organization (SRO), but it is acted as if it is a Quasi-State Institution or an Autonomy/ Subordinative Body which is given a Regulative Authority.
- c. Political obstacle exists in the domination of political party which has already taken root in Indonesia political system. Political party has controlled three main parts of power that is political party nominates legislative official, carries executive official and recommends judicative main official. In elite theory, it is known the Iron Law of Oligarchy exists, where political organizations, including parties tend to be controlled by a handful of elites. The hierarchical structure of party has made the power is concentrated and difficult to be penetrated by individual or group outside the party.⁹ In the theory of functionalism, Sidney states that political party serves as an intermediary between people and government, therefore it is difficult for other power to compete without party mechanism. Political party has a vital function in the political system, including interest articulation, interest aggregation, and political recruitment.¹⁰
- d. Cultural obstacle is related to system habituation and political dogma which is continuous until it is considered correct (The Illusory Truth Effect) in the society which get pseudo-truth effect. Single belief on political party is because of the weak and low education and political awareness. But this reality actually strengthens political interest in the practice of democratic manipulation. Blind trust on a political party is often a result of elite ideologic control, not a critical political awareness.¹¹ Likewise, Rousseau has criticized the representative system which gives full trust to political party can keep the people away from direct participation in government, thus risking in creating elitism and corruption.¹²
- e. Theoretical obstacle which is related to the presence of epistemological monism in all experts of political science and constitutional law considers that there is only one right democratic approach through political party in explaining a such democratic phenomenon, whereas other theory is considered wrong or irrelevant. There is also scientific dogmatism, that is a closed science attitude in representative democracy which considers that political party is the only absolute truth and rejects the possibility of the presence of other valid theory.

The most important obstacle is political obstacle, that is the political willingness of the members of DPR to do amendment of the 1945 Constitution of the Republic of Indonesia Article 22E paragraph (3) "The participants of general election who elect the members of the People's Representatives Council and the Council of Representatives of the Regions are political parties." All members of DPR who at the same time are the members of political party should be in resignation attitude and in other wise not do any political rejection. Political egocentrism by political party elites becomes the second biggest obstacle because the reluctant to receive a right policy but on other side it undermines political party interests. Political elites experience egocentrism, even to the naïve attitude, which is called with elite conservatism in politics because of the following reasons: *the first*, threatening political party domination, *the second*, the impact on political party elite power and interest, *the third*, the concerns to political stability, *the fourth*, the potency of reduced political fund, *the fifth*, maintaining loyalty and solidity of political party. In general, political parties and the theorists behind them hold fast to a reason that the use of political parties is for the stability of party system, overcoming some difficulties in decision

⁹ Robert Michels. Political Parties (A Sociological study of the Oligarchical Tendencies of Modern Democracy) York Hearst's International Library Co. Year 1915. Page 41.

¹⁰ Gabriel A. Almond & Sidney Verba. The Civic Culture: Political Attitudes and Democracy in Five Nations. Princeton University Press. Year 1963. Page 225.

¹¹ Antonio Gramsci – In Selections from the Prison Notebooks. International Publisher (the first edition). Year 1971. Page 147.

¹² Jean-Jacques Rousseau. Op. Cit Page 57

making in the parliament, overcoming the potency of the weak political accountability, overcoming some difficulties in the government formation. Regardless of this subjective reason, some parties propose the presence of independent path for the candidate of DPRD members as an effort to strengthen democracy and give an alternative for society who lack trust to political party. The idea on independent candidate in DPR-DPRD election has some ideal foundations, including political philosophy, the principle of justice, people's sovereignty, and human rights. Besides that, the practical reason is the problematic political practices, technology development, and more independent political culture awareness. The following are the reasons:

- a. Philosophical Reason: Substantial Democracy and Political Freedom
Democracy in political philosophy study does not only relate to political procedure but more in how substantial achievement of political struggle is, in the form of ideal people's rights. Formal reality with only political party as the nominee shows the existence of individual political rights restriction practices who want to participate in the government without being bound to a certain ideology or party interests. By opening independent path, general election becomes more democratic and give some opportunities to individual who has competence, integrity, and tangible public support.
- b. Theoretical Reason: Democracy Theory, Political Representative Theory
Democracy theory by Schumpeter emphasizes people involvement in determining their leader, including through independent candidacy mechanism. Schumpeter explains that democracy is a political method where individual obtains power through competition for getting people's voice. Independent path strengthens competition and enables a broader choice for the people.¹³ Political representative theory by Pitkin states that political representative does not necessarily base on political party, but can have source directly from individual who get mandate from the people. In this theory, independent path becomes an alternative for the candidate who wants to represent people's interests without being tied to the party's agenda.¹⁴
- c. Principal of Justice: Equality of Rights in Politics
Becoming the member of representative is individual rights not group rights. Provision that requires people to elect political party's choice is the form of dominant ideologization. Some rules in the constitution by giving the intended rights on each individual is in accordance with Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Every person shall have the right to the freedom to associate, to assemble and to express opinion". Therefore, the related arrangement should be optional that is through a group of political parties as the consequence of "to associate and to assemble" and whenever does not take this kind of rights, then it is given with a choice in independent path. But the policy is about only political party which is a form of legality practice which is not morally and ethically legitimate (Legality but Illegitimate), where law is used as a tool of power to justify an action which is actually not valid or breaking democracy principle and human rights (Rule by Law).
- d. The Principle of People Sovereignty: Returning Sovereignty to the People.
The 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) emphasized that, "Sovereignty is in the hand of the people and is implemented according to this Constitution". However, the provision of this article is contradictory to Article 22E paragraph (3) on the exclusivity of participation by political parties. this contradictory norm causes legal uncertainties, conflicts in legal interpretation, political and governmental instability, the weakening human rights, and abuse of power. In legal harmonization approach, Article 22E paragraph (3) should follow the meaning included in Article 1 paragraph (2) and 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia. By giving possibility to independent path, people can have more freedom to elect a representative who really represents their aspiration, not merely a choice which is provided by political party.
- e. Human Rights: Political Rights without Discrimination

¹³ Joseph A. Schumpeter. *Capitalism, Socialism, and Democracy*. London and New York. Publisher George Allen & Unwin. Year 1976. Page 252.

¹⁴ Pitkin, Hanna Fenichel. *The Concept of Representation*. University of California Press. Publisher Berkeley. Year 1972. Page 144.

Test the Constitution of the Republic of Indonesia by the universal principle in the Universal Declaration of Human Rights (UDHR) Article 21 and the International Covenant on Civil and Political Rights (ICCPR) Article 25. Therefore, Article 22E paragraph (3) contains a Legitimate Limitation.¹⁵ However, those intended provisions can be canceled when this limitation is actually disproportionate or excessive, does not have clear basis in positive laws because there is a contradiction of meaning in the articles of the Constitution, in practical level there exists a systemic discrimination, which means that democracy is determined by a capital ownership. This declaration is in accordance to the constitutional logics that is Article 1 paragraph (2) and 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia which contains people's inherent individual rights but it is eroded by Article 22E paragraph (3) which means that it is merely a given rights to political party (Positive Rights).

f. Problematic Political Practice: Corruption and Political Oligarchy

Political practice in Indonesia is often colored by party oligarchy, transactional politics, and corruption. Party based candidacy system is often not based on capacity and integrity, but on its closeness to Party Elite or the candidate's financial capacity. By the existence of independent path, public are able to elect a candidate who is not bound to a Party's interest or political oligarchy. In order to realize the quality of the member, then it is proposed an idea of DPR-DPRD candidate members selection, which is expected it can increase the quality of legislative. By the presence of test based selection, it is expected that only individual who has proper intellectual capacity, legal understanding, and also commitment to state interests can become a legislative candidate member.

g. A More positive and Independent Political Culture Awareness

Along with the development of society's political awareness, there are more voters who want a having integrity leader, not merely a party's cadre. A more rational and independent political culture leads to a desire to elect a competent figure, not only individual who gets the blessing from party elites. Independent path will encourage the emergence of leaders who orientates more on the interests of the country not groups or parties. the culture of electing the members of DPR/ DPRD based on the quality not merely the number of votes quantity, can be begun by a test-based approach or competence test.

2. A Comparative Study on Independent Path DPR-DPRD Candidates

The practice of independent candidates of DPR-DPRD is also applicable in many democratic countries. The following discussion is a general description in a number of democratic countries which apply this pattern. The following is the explanation of its legal basis, candidacy mechanism, tasks, and their accountability to the constituent, which then can be used as a comparison to its possible application in Indonesia.

a. United States of America

The candidacy system of DPR-DPRD members or also called with the senate members and/ or the House of Representative in United States gives choices of independent candidacy and through political parties.

- 1) The Legal Basis of Independent Candidacy: In the Constitution of the United States of America, especially in 17th Amendment of 1913 states that the senator members are elected directly by the people not by state legislative. Whereas the senator means the representatives who occupy the national parliamentary legislative. Meanwhile, there is also State Constitution obtained which contains a provision of independent candidacy requirements including the requirement of the number of signatures, registration, and the candidacy deadline. Although the Constitution of United States does not explicitly state it, but the State Constitution regulates the candidates of nonpolitical party representative members.

¹⁵ The nature of a legal restriction by a state to citizens' freedom of right is allowed with a provision that should fulfill the following three requirements: Regulated by law. Necessary in the democratic society. For a legitimate purpose, such as national security, public order, etc. This provision is also ratified by the Constitution of the Republic of Indonesia in Article 28J, "In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon consideration of morality, religious value, security and public order in a democratic society".

- 2) The System of Screening and Selection: An independent candidate of US Senate has to fulfill some requirements, including: (1) General requirements (the Constitution of the United States, Article 1, section 3) at least 30 years old, been 9 years a citizen of the United States, and be an inhabitant of the State for which he represents. (2) Requirements in registration and verification stage is collecting the signature of voter citizens which varies in number in each state in accordance to the total number of candidate list. The time of registration and candidacy is determined by the State Election Commission. The prospective candidates apply for registration and pay registration fee without any primary election mechanism by political parties.
- 3) The Duties and Obligations of Independent Senators: The members of senator and/ or the representative have the same jobs, functions and authorities with the senators/ representatives from political party candidates. A general description of the duties and authorities of senator is forming and enacting laws on the state and at the same capacity, they have legal standing on behalf of the state, which have the same rights in the national constitution amendment. The members of senator/ the House of representative represent each state's interests in dealing with various public policies including education, social security, economy and industry, living environment, law and security and cooperative relations between the states by the group of senate committee. In giving control to the executive, which is in fact promoted by political party, then the independent senators/ the representatives have the role as the vote deciders in some crucial policies and more freely in making some decisions than the members of political parties.
- 4) Accountability to the Constituents: An independent senator is directly accountable to people who has elected him. The form of his accountability includes: (a) Holding a meeting with the community (Town Hall Meeting) with a purpose to hear the constituents' aspiration. (b) Publishing performance reports related to the supported legislation and policies. (c) Running a financial transparency, including campaign fund management and salary as a public officer. (d) Supporting some policies which are in favor of public interests, not Party's interests. (e) Their mandate can be revoked through a recall election if the constituents consider not satisfy with their performance (although it is rarely happened in senate level).

Pre-election general requirement for the candidates is gathering supporting signature from voter individuals. Although these individuals also become one part of political party web, in the experience in United States it is found that non-political party Senators/ the Representatives have more sensitivity, are more critical and freer in defending and making some decision for the shake of citizen's interests than political party. Their performance is directly reported to the citizens openly, without being reviewed previously by the political party in order to adjust the interest and the agenda of political party. This direct accountability through democratic instrument and other deliberative better reflects direct democracy.

b. Germany

The Federal Republic of Germany applies a representative system which consists of two institutions, including *Bundesrat* serves as the Senate and *Bundestag* serves as the Representative or the Parliament. the members of national senator are not elected through election but are the *lander* or representatives from its states. They have specific grade which fulfilling some qualifications for becoming a delegation. The states delegate some representatives from their citizen to occupy *Bundesrat* position without going through political party and independent path.

Meanwhile, *Bundestag* is the federal parliament or the representative in the States which is directly elected by the people through election mechanism. This is what becomes the difference with the United States, where the members of federal parliament are independent candidates but they are directly elected by the people without any political party choice. The practice in Germany is a combination of two systems, that is proportional and direct election. in order to become an independent candidate in the *Bundestag*, each candidate is required to fulfill the requirement of gathering at least 200 signatures of the local voters then collect them to the Election Commission. The voters are given with two ballot papers, that to elect the individual who occupies the *Bundestag* position and to elect political party. The subject of this proportional system is the political party

ballot and the direct subject is the independent candidate ballot. Whereas in the candidate position from political party candidate is applied with closed proportional system.

The process of *Bundestag* election in Germany and the form and pattern of its political accountability can be described as follows:

1) The Process of Independent Candidacy in the *Bundestag*

Vote Support Gathering	- An independent candidate should obtained written support from at least 200 registered voters from his electoral district (constituency) from the State they running for. - This support should be submitted before the registration deadline established by the Federal Election Commission (<i>Bundeswahlleiter</i>).
Registration to the Federal Election Commission	- After submitting support signatures, the independent candidate should submit the candidacy document to the local election authority for verification process. - After being approved, their name will appear on the ballot paper as an independent candidate in this electoral district.
Election System of <i>Bundestag</i>	- Germany uses Mixed-Member Proportional Representation (MMP) system which combines district system (<i>First-Past-The-Post</i>) and proportional representation of party-list. - An independent candidate can only contest in district election (<i>Erststimme</i>) and cannot enter through party-list system (<i>Zweitstimme</i>) - If an independent candidate wins the majority vote in his district, he will automatically get a seat in the <i>Bundestag</i>
Some Obstacles for Independent Candidacy	- Because most seat in the <i>Bundestag</i> is determined through party-list system, an independent candidate rarely gets elected. - History has shown that there are only few independent candidates who success winning the <i>Bundestag</i> seats because of the strong political party domination

2) Political Accountability of the Independent Members of *Bundestag*

Accountability to the Constituent	▪ Not having party affiliation means that an independent member should be accountable directly to his constituent in his electoral district. ▪ Independent member routinely holds a meeting with his constituent in order for listening their aspiration and explaining his political attitude in various issues.
Not bound to Parliamentary Fraction	▪ Because not the part of a party, the independent members usually do not have any administrative support and political resources like the members from big parties do. ▪ They cannot enjoy some facilities such as fraction financing (<i>Fraktionsfinanzierung</i>), therefore they have to work more independently.
Public Control Mechanism	▪ Media, civil community groups, and the voters become the main supervisor for the independent politicians. ▪ They should be more active on their performance transparency, including reporting their political activities routinely to the public.
Support in Decision Making	▪ Independent members are still able to participate in the Parliament debate and proposing some policy proposal, but they need to look for some support from other parties in order that their proposal getting attention. ▪ Because not bound to any parties, they have a freedom to voice their voters' interests more intensely without getting any pressure from the parties.
Performance Evaluation through the Next Election	▪ If their performance is considered unsatisfactory by their voters, they may fail to reelected on the next election. ▪ Their success is highly dependent on how well they build a trust with the people.

3. The Concept of Independent Path DPR-DPRD Candidates Arrangement in Indonesia

The trust toward political parties is decreasing. Political parties occupy a position with the lowest public trust level, with only 4% of respondents who state highly trusting and 58% of them state trusting.¹⁶ Index of trust to political parties of 51% has placed it as one of institutions with the lowest public trust.¹⁷ Political parties only get trust from 56.6% respondents, far behind to TNI (the

¹⁶ Survey of Indikator Politik Indonesia (January 16-21 2025).

https://nasional.kompas.com/read/2025/02/04/11220791/kepercayaan-publik-mengkhawatirkan-saatnya-parpol-berbenah?utm_source=chatgpt.com. Accessed March 16 2025

¹⁷ Survey of Lembaga Survei Indonesia (July 1-8 2023).

https://katadata.co.id/berita/nasional/64ac573c4baf8/survei-isi-kepercayaan-terhadap-dpr-dan-partai-politik-paling-rendah?utm_source=chatgpt.com. Accessed March 16 2025

Indonesian Army) which is trusted by 93.3% of respondents.¹⁸ This decrease in trust is caused by some factors including corruption and political scandal, unfulfilled campaign promises, political elite domination, the lack of *cadreization* and regeneration, the lack of transparency and accountability, the influence of money politic. The low public trust to political parties can become an indicator of the bad quality of democracy in a such country. This phenomenon becomes an alarm or signal of quality degradation of democracy. The idea to give access to independent candidates in legislative election (DPR and DPRD) as an effort in guaranteeing the rights of democracy in the middle of the weakened public trust to political parties is an interesting and relevant idea. Meanwhile, an independent (non-party) candidate for DPR and DPRD is still facing some current significant regulation obstacles, that is the single participation by political parties and the absence of mechanism for the independent candidate to run for, different to regional head election which allowing independent candidates.

But even more than that, it needs to be noted that there are some fundamental Articles in the Constitution which guarantee every citizen in Indonesia for having the rights of electing and to be elected, including:

- a. Article 19 (1) states that the members of DPRD (Regional) and DPR (National) are elected through General Election. This Article is contained in Chapter VII.
- b. Article 27 paragraph (1) on legal restrictions which are discriminative to the citizens' fundamental rights.
- c. Article 1 paragraph (2) on the fundamental nature of the state and democracy system means that sovereignty is in the hands of the people and is implemented according to the Constitution.
- d. Article 28E (3) that every person shall have the right to the freedom to associate, to assemble and to express opinions.

In the context of General Election as the most fundamental democratic session, then the individual citizen (*natuurlijke person*) is guaranteed for his rights in Article 19 (1), Article 22E (2), Article 28, Article 1 paragraph (2), Article 28E (3). Likewise, political party (institution) is also guaranteed in Article 22E paragraph (3). Both of them as the subjects of law have equality of legal subject. The reality of legal politics which only gives opportunities to political parties has described the nature of legal exceptions. In order to mediate this contradiction, it needs a consistence in the core theories as follows: *The first*, the theory of legal norm hierarchy which sees legal norm hierarchy in *Stufenbau Theory*, explains that if there is internal contradiction happened in the constitution then the fundamental norm should be prioritized.¹⁹ *The second*, legal interpretation theory with teleologic interpretation approach, that is interpreting an article based on its legal purpose and the constitution spirit.²⁰ *The third*, judicial review theory explains that if there is a contradiction among the articles in the constitution which leads to a legal uncertainty, then judicial institution (especially The Constitutional Court/ *Mahkamah Konstitusi*) has an authority to conduct judicial review in order to interpret the constitution and to resolve the contradiction.²¹ *The fourth*, *lex specialis* and *lex superior* theory with *lex superior derogate legi inferiori* approach, then the norma with higher position in the constitution should be more prioritized than other norms with lower position or technical.²²

¹⁸ Survey of Indikator Politik Indonesia (June 16-24 2022).

https://databoks.katadata.co.id/politik/statistik/berapa-banyak-warga-yang-percaya-partai-politik-ini-hasil-surveinya?utm_source=chatgpt.com. Accessed March 16 2025

¹⁹ Hans Kelsen. *Reine Rechtslehre* (Teori Hukum Murni) or (English translation: *Pure Theory of Law*) 1934 (the First Edition), 1960 (the Second Edition, more complete). Franz Deuticke (the First Edition). Scientia Verlag Aalen (the Second Edition).

²⁰ Friederich Carl von Savigny. *System des heutigen Romischen Rechts*. Veit und Comp. Berlin. Publisher Berlin Veit. Year 1840. Page 21.

²¹ Robert Lowry Clinton. *Madison and Judicial Review*. University Press of Kansas. Year 1989. Page 102. Also read Christopher Wolfe. *The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law*. New York: Basic Books and Rowman & Littlefield Publishers. Year 1994.

²² Referring to the above theories, then the step of arrangement to the independent DPR-DPRD candidate is started with the 1945 Constitution amendment especially Article 22E paragraph (3) by adding the word "*individual/ perseorangan*", so that its law output is the election of DPR-DPRD can be participated by either political party candidate or independent candidate (non-political party). This arrangement is very reasonable in favor of guaranteeing the higher and fundamental norms, that is the citizen's constitutional rights and human rights (read Article 1 paragraph (2), Article 28 and human rights in Article 28E (3)).

Constitution Court can conduct supremacy of law by accepting judicial review in order to create a new law, although the intended law is not or has not been existed implicitly in the 1945 Constitution. Some decision is *quasi-legislative* or *judicial law-making* in nature which refers to the Constitution Court practice in creating a new legal norm through its decision, as long as it is still based on the fundamental norms in the 1945 Constitution. Constitution Court has a role in “*the constitutional law-making*”, that is when the Court’s decision is not only declarative (stating that a norm is in-constitutional) but also constructive in creating new norms.²³ The Constitution Court’s decision which gives birth to a new law and should be followed by Amendment to the Law is called with conditional decision (*conditionally constitutional* or *unconditionally constitutional*). Some citizens who have legal standing can propose Judicial Review upon the Act on General Election and also some other related Acts such as the Constitution of MD3 (MPR-DPR-DPRD-DPD). Judicial review which is specific to the Act of General Election which does not accept independent candidates for DPR and DPRD is based on the following legal argumentation:

- a. The legal basis of judicial review submission is Article 24C paragraph (1) of the 1945 Constitution that the Constitution Court has the authority of reviewing laws against the 1945 Constitution and Article 51 paragraph (1) Act Number 24 of 2003 on the Constitution Court, which states that the party who has legal standing can propose petition for judicial review.
- b. The collision between the Act of General Election and the 1945 Constitution that is Article 1 paragraph (2) states that “Sovereignty is in the hands of people and is implemented according to this Constitution”. In the principle of the people are sovereign means that individual is eligible to run for without through a political party. The norm on the equality of rights in the governance in Article 28 paragraph (2), 28D paragraph (3) is applicable as an antithesis to the provision of Article 22E paragraph (3). Therefore, the decision of dualism system change of National DPR-DPRD candidacy becomes a choice of synthetic law.
- c. The Precedent and Possibility of the Constitution Court Decision is that the Constitution Court has ever granted an independent candidate for Regional Head Election (*Putusan MK No. 5/PUU-V/2007*), with similar reason on the citizen’s constitutional rights. If referring to that decision, the Constitution Court should be able to be consistent in accommodating the independent candidate for DPR and DPRD.
- d. An obstacle in Judicial Review is Article 22E paragraph (3) of the 1945 Constitution, which states that “The participants in the general election for the election of the members of the DPR and the members of the DPRD are political parties”. This Article can become a basis for the Constitution Court to reject a judicial review, except there is a more progressive interpretation on then citizen’s constitutional rights. Besides that, it has potential to create a political resistance because the judicial review will encounter some resistance from any political parties who have interests in the candidacy monopoly.
- e.

Conclusion

The independent DPR-DPRD candidacy encounters a number of obstacles including constitutional, juridical, cultural, and theoretical obstacles. The model and practice of independent candidate has existed in many democratic countries including Germany, United States, Franch, and Australia. Although the policy is applicable in their States, but the similarity with Indonesia is that the elected DPR members from the regional electoral district also have similar functions and jobs with the national government. In the frame of respect to human rights and constitutional rights, then the independent candidacy can be pursued through two steps of supremacy, including: *The first*, political supremacy through the Amendment of the 1945 Constitution of the Republic of Indonesia by adding a sentence, “the participant of DPR-DPRD elections is individual”. *The second*, through law supremacy, that is judicial review decision by resulting in a conditionally constitutional decision where the participants of DPR-DPRD elections are political parties and individual citizen.

²³ Jimly Asshidiqie. *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta. Konstitusi Press. Year 2005. Page 153.

References

- Abdil Mughis Mudhoffir dan Coen Husain Pontoh. Oligarki : Teori dan Kritik. Penerbit Marjin Kiri. Thn 2020).
- Ahmad Sanusi. 10 Pilar Demokrasi Dalam Pemberdayaan Masyarakat. Raja Grafindo Persada. Jakarta. Thn 2006
- Al Ghozali Hide Wulakada. Dekonstruksi Partai Politik (Tinjauan Filsafat Hukum). Disertase Universitas Sebelum Maret Surakarta. Thn 2024
- Amalia Syauket. Membangun Dinasti Politik-Oligarki yang Korup (Fenomena Pilkada Serentak 2020). Kreasi Cendekia Pustaka. Thn 2021
- Antonio Gramsci – Dalam Selections from the Prison Notebooks. International Publishers (edisi pertama) Thn 1971.
- Benjamin Barber. Strong Democracy (Participatory Politics for a New Age). University of California Press Publikasi Februari 2004.
- Friedrich Carl von Savigny. System des heutigen Römischen Rechts. Veit und Comp. Thn 1840
- Gabriel A. Almond & Sidney Verba. The Civic Culture: Political Attitudes and Democracy in Five Nations. Princeton University Press. Thn 1963.
- Giovanni Sartori. Parties and Party Systems: A Framework for Analysis. Cambridge University Press, 1976
- Guntur Hamzah. Oligarki dan Totalitarianisme Baru. Jakarta. Penerbit Gramedia. Thn 2023.
- Hannah Pitkin. The Concept of Representation. Published by University of California Press. Thn 1972 in Edition 2019
- Hans Kelsen. Reine Rechtslehre (Teori Hukum Murni) atau (terjemahan bahasa Inggris: Pure Theory of Law) 1934 (Edisi pertama), 1960 (Edisi kedua, lebih lengkap). Franz Deuticke (Edisi pertama), Scientia Verlag Aalen (Edisi kedua)
- <https://nasional.kompas.com/read/2025/02/04/11220791/kepercayaan-publik-mengkhawatirkan-saatnya-parpol-berbenah?>. Diakses tanggal 16 Maret 2025
- Jean-Jacques Rousseau. Book description of The Social Contract. by publisher. on the 31st December 2024.
- Jean-Jacques Rousseau. The Social Contract. Global Grey on the 31st December 2024.
- Jimly Asshiddiqie. Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi. Jakarta. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi dan Jimly Asshiddiqie. Thn 2005
- Jimly Asshiddiqie: Dalam bukunya "Hukum Tata Negara dan Pilar-Pilar Demokrasi". Konstitusi Peress. Jakarta. Thn 2005.
- John Stuart Mill. Considerations on Representative Government. Most recently updated: February 7. Thn 2013
- Joseph A. Schumpeter. Capitalism, Socialism, and Democracy. Publishers George Allen & Unwin. London and New York. Thn 1976.
- Joseph Schumpeter. Capitalism, Socialism, and Democracy. London and New York. Stockholm University. published in the Taylor & Francis e-Library, 2003.
- Larry Diamond dan Juan J. Linz. Democracy in Developing Countries. Lynne Rienner Publishers, 1989 132.
- Maurice Duverger. Political Parties: Their Organization and Activity in the Modern State. Methuen, 1954
- Pitkin, Hanna Fenichel. The Concept of Representation. Publisher Berkeley : University of California Press. Thn 1972.
- Pratikno "Calon Independen, Kualitas Pilkada dan Pelembagaan Parpol". Jurnal Ilmu Sosial dan Ilmu Politik. Volume 10, Nomor 3, Maret 2007 (415-438)
- Robert A. Dahl. Polyarchy: Participation and Opposition. Yale University Press, 1971
- Robert Lowry Clinton. Marbury v. Madison and Judicial Review. University Press of Kansas pada tahun 1989. Dan baca juga Christopher Wolfe. The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law. Rowman & Littlefield Publishers. 1994
- Robert Michels. Partai Politik: Kecenderungan Oligarkis dalam Birokrasi. Rajawali. Thn 1984
- Robert Michels. Political Parties (A Sociological study of the Oligarchical Tendencies of Modern Democracy) York Hearst's International Library Co. Thn 1915
- Samuel P. Huntington. Political Order in Changing Societies. Yale University Press, 1968
- Satriya Nugraha. Legislatif dan Demokratisasi : Peranan Legislatif Dalam Membangun Demokrasi di Indonesia. diterbitkan dalam Morality: Jurnal Ilmu Hukum, Vol. 9, No. 2. Thn 2023.

- Survei Indikator Politik Indonesia (16-24 Juni 2022).
<https://databoks.katadata.co.id/politik/statistik/693e42dc80783ce/berapa-banyak-warga-yang-percaya-partai-politik-ini-hasil-surveinya?>. Diakses tanggal 16 Maret 2025
- Survei Lembaga Survei Indonesia (1-8 Juli 2023).
<https://katadata.co.id/berita/nasional/64ae573e4baf8/survei-lsi-kepercayaan-terhadap-dpr-dan-partai-politik-paling-rendah?>. Diakses tanggal 16 Maret 2025
- Yogi Prasetyo. The Stringent Support Requirements for Independent Candidates in Regional Elections: A Legal Self-Critique of Indonesian Democracy. Faculty of Law, Universitas Muhammadiyah Ponorogo. Vol. 21 No. 2. (2024)