

Juridical Construction of Legislative Term Limits in Indonesia

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Abstract. Legislative term limits are an important aspect of the legal context of legislative power. This research attempts to examine the legal construction of legislative term limits in an effort to understand their legal basis and impact on the political and governance system. In the exercise of the legislative function, term limits become a crucial tool to prevent excessive consolidation of power and to ensure the rotation of political elites. This research involves the analysis of various laws and regulations governing legislative term limits at different levels of government. The legal construction analysis covers aspects such as the constitutional basis, the legislative process involved in setting term limits, and the legal considerations underlying the decision. In addition, this research will examine the implications of term limits for political stability, accountability and representation in a democratic system. The findings of this research are expected to provide a deeper understanding of the concept of legislative term limits, both in the context of legal theory and implementation practice. The impact of legislative term limits on political dynamics and governance can provide valuable insights for policy makers, academics and the general public concerned with the legal aspects of the system.

Keywords: Construction, Periodicity, Legislative.

Abstrak. Pembatasan masa jabatan legislatif merupakan suatu aspek penting dalam konteks hukum yang berkaitan dengan kekuasaan legislatif. Penelitian ini mencoba untuk menyelidiki konstruksi yuridis pembatasan masa jabatan legislatif sebagai upaya untuk memahami landasan hukum dan dampaknya terhadap sistem politik dan pemerintahan. Dalam menjalankan fungsi legislasi, pembatasan masa jabatan menjadi instrumen yang menentukan untuk mencegah konsolidasi kekuasaan yang berlebihan dan memastikan rotasi elit politik. Penelitian ini melibatkan analisis terhadap berbagai peraturan perundang-undangan yang mengatur pembatasan masa jabatan legislatif di berbagai tingkatan pemerintahan. Analisis konstruksi yuridis mencakup aspek-aspek seperti dasar konstitusional, proses legislasi yang terlibat dalam penetapan pembatasan masa jabatan, dan pertimbangan hukum yang mendasari keputusan tersebut. Selain itu, penelitian ini juga mengeksplorasi implikasi pembatasan masa jabatan terhadap stabilitas politik, akuntabilitas, dan representasi dalam sistem demokratis. Hasil penelitian ini diharapkan dapat memberikan pemahaman yang lebih mendalam tentang konsep pembatasan masa jabatan anggota legislatif, baik dalam konteks teori hukum maupun praktik implementasinya. Implikasi dari pembatasan masa jabatan anggota legislatif terhadap dinamika politik dan tatanan pemerintahan dapat memberikan wawasan berharga bagi pembuat kebijakan, akademisi, dan masyarakat umum yang peduli terhadap aspek-aspek hukum dalam sistem politik ketatanegaraan suatu negara.

Kata kunci: Construction, Periodicity, Legislative.

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INTRODUCTION

The problem of the absence of term limits for members of the legislatures cannot be separated from the history of past authoritarianism in the form of abuse of power. In many cases, the government in power often abuses its power. As Dan Merriem argued, "it is true that whoever holds power and however well it is exercised, power has the seeds/potential of various diseases, as the classic maxim on the abuse of power (power tends to corrupt, but absolute power corrupts absolutely) has not been disputed until now.¹ Where the organizers of the government place themselves above the people and see themselves as the source of all applicable order, as in the expression "l'Etat cest moi" (with means I am the State). It is not a ruler who submits to the people. But the people are subject to the ruler. In fact, the issue of term limits does not only concern the executive institution but also the members of the parliament.

Today, members of the legislature can be elected up to three or four times. This leads to the perpetuation of the periodization of power in the body of legislative members and the blunting of leadership renewal through political parties. One of the facts is that there are members of the House of Representatives who have served six terms from 1987 to 2019, namely Tjahjo2 and Ceu Popong who is 76 years old, both of whom have served as members of the House of Representatives since 1987 until the 2014 period or are currently still serving as members of the House of Representatives.²

If the proposed legislative candidates are the same as the candidates of the previous period and do not have the ability to represent the aspirations of the people, they usually tend to abuse their power more easily. This is because, with the power that a person has, he can influence the behavior of others in such a way that the behavior is in accordance with the purpose of the person who has the power. In line with this, Held stated that the power to make decisions must be freed from the illegitimate pressure of the great stream of power.³ The impact of the abuse of power in practice tends to cause corrupt behavior. Corruption is difficult to eradicate because

¹ Ellydar Chaidir, *Negara Hukum Demokrasi, Dan Konstalasi Ketatanegaraan* (Jakarta: total media, 2007), 15.

² Kompas Editor, "Karir Politik Tjahjo Kumolo Paripurna," Kompas, July 10, 2023, <https://Nasional.Sindonews.Com/Read/931246/12/usia-57-Karir-Politik-Tjahjo-Kumolo-Paripurna-1417411329>.

³ Kompas Editor.

Indonesia's bureaucracy is an old bureaucracy that has inherited a very chronic corruption disease. Based on a survey published by Transparency International (IT), the Parliamentary is the most corrupt institution in Indonesia.⁴

On the other hand, the perpetuation of power in the legislative body is abused by influencing the election process, for example by conducting early campaigns.⁵ Thus, it influences the process of holding elections, which in Indonesia tend to be uncompetitive and non-participatory. Referring to Huntington's theory of two important dimensions in the implementation of democracy, namely competition and participation.⁶ Competition as a place for the participation of candidates from one political party and another in the competition for political positions, the consequence is that various forms of political maneuvers are determined by the results of the old organs with influential power in them. As in the case of Song Sip, Sukarwanto and Mega Chandra Sera, where Song Sip was once listed as a member of the Central Java DPRD through the Prosperous Peace Party. Sukarwanto and Mega Chandra once volunteered to run as councilors, but their party was always filled with old people who had served many times. This meant that his party had no chance of taking up legislative positions.⁷

Furthermore, in the aspect of participation, the guarantee of community involvement in the use of the right to vote is not accommodated in the effort to run through political parties as an instrument of democracy. This is due to the fact that the process of renewing political parties is not running smoothly. The high cost of contesting the legislative election, in the 9 April 2014 election, resulted in some parties having to provide funds of up to two billion rupiah.⁸ This indirectly causes the reluctance of

⁴ Riana Rizkia, "Kutip Hasil Riset TII, Mahfud MD Sebut DPR Lembaga Paling Korup," Sindonews, May 31, 2023, <https://nasional.sindonews.com/read/1114191/13/kutip-hasil-ri-set-tii-mahfud-md-sebut-dpr-lembaga-paling-korup-1685545505>.

⁵ Oky Pitoyo Laksono, "Kajian Terhadap Periodisasi Anggota Legislatif Sebagai Upaya Meminimalisir Kecurangan Pemilu," *Jurnal Penelitian Ilmu Hukum* 2, no. 4 (October 2022): 131, <https://doi.org/doi.org/10.56393/nomos.v1i6.318>.

⁶ Idil Akbar, "PILKADA SERENTAK DAN GELIAT DINAMIKA POLITIK DAN PEMERINTAHAN LOKAL INDONESIA," *CosmoGov* 2, no. 1 (April 14, 2017): 106, <https://doi.org/10.24198/cosmogov.v2i1.11852>.

⁷ Rina Atriana, "MK Belum Bersikap Soal Batasan Periode Anggota Legislatif," DetikNews, accessed January 16, 2025, <https://news.detik.com/berita/d-3062090/mk-belum-bersikap-soal-batas-maksimal-periode-anggota-legislatif>.

⁸ Ruslan Ismail, *Berpolitik dengan Biaya Murah*, Yogyakarta: Thafa Media, 2012, p. 244

potential legislative candidates who have the competence to participate in the election campaign. Therefore, this restriction should come from the political parties to place members of the House of Representatives without giving importance to certain interests.

Since many phenomena have occurred in the absence of restrictions on the periodization of legislative tenure, the researcher aims to examine the periodization of tenure, which varies depending on the focus and scope of the research conducted. This work is carried out systematically, methodically, and consistently, analyzing and constructing the collected and processed data.⁹ This legal research uses analytical descriptive legal research, which is a research that aims to provide an overview of the state of the object of the problem through the processing and analysis of the data obtained, then to obtain materials or means about what must be done to overcome a problem. The author tries to provide a complete overview and discussion so that this research is explanatory.

METHODOLOGY

This study uses both primary data and secondary data. Secondary data was obtained through field research, namely by using questionnaires that were prepared openly with the respondents. Secondary data was obtained by examining legal materials that are relevant to the research consisting of:

- a. Primary legal materials:
 1. Basic norms of Pancasila;
 2. the 1945 Constitution and the Decree of the People's Consultative Assembly of the Republic of Indonesia;
 3. Laws and Regulations on the Determination and Examination of Court Hearings in the Criminal Procedure Law;
 4. Jurisprudence related to prosecution and examination issues in court hearings as well as the use of coercive force.
- b. Secondary legal materials:

⁹ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: raja grafindo persada, n.d.), 1.

1. The scientific writing of scholars that are relevant to the research material.
2. Research results that are relevant to the research material
- c. Tertiary legal materials:
 1. A bibliography that is relevant to the research material.
 2. Dictionary/encyclopedia that is relevant to the research material.

I. The Urgency of Legislative terms within a democratic framework

The House of Representatives has a significant role in the Indonesian constitutional system, namely the legislative function, the budgetary function, and the oversight function. First, the legislative function is the function to formulate laws that are discussed with the President for mutual approval. Second, the budgetary function, which is the function of preparing and approving the State Revenue and Expenditure Budget (APBN) with the President, considering the considerations of the DPD. Third, the oversight function, which is the function to supervise the implementation of the 1945 Constitution of the Republic of Indonesia, the law and its implementing regulations.

Other provisions regarding the House of Representatives are further regulated in Law Number 17 of 2014, as last amended by Law Number 13 of 2019 on the Third Amendment of Law Number 17 of 2014 on the MPR, DPR, DPD and DPRD (MD3 Law). Article 76 (4) of the MD3 Law provides that members of the House of Representatives shall hold office for a term of five years, which shall end upon the inauguration of a new member of the House of Representatives. The MD3 law does not regulate the provisions for limiting the term of office of members of the House of Representatives. At present, neither the Constitution nor the law provides for a term limit for members of the legislature. Not surprisingly, incumbent candidates are elected three or four terms. This result is that the same person having great authority for a long time, which can eventually lead to abuse of power. This is reinforced by excessive power, which tends to force others to do the will of those in power.¹⁰

In the 2019-2024 House of Representatives elections, which have already taken place, there are 575 new members of the House of Representatives and 298 members who

¹⁰ Rafael Raga Maran, *Pengantar Sosiologi Politik* (2001, n.d.), 190.

have previously served, or around 50.26%. The lack of term limits for members of the legislature has led to a lack of renewal in the legislative body. In fact, the constitutional rights of citizens can be better fulfilled with the limitation of the legislative term. Given the changes in the legislature, it is hoped that the presence of individuals full of idealism and optimism can lead Indonesia to a democratic state of law.¹¹

As an institution, the House of Representatives has a long history in the development of the Indonesian constitution. Broadly speaking, the formation of the House of Representatives can be divided into two forms, namely the formation of the Volksraad or it can be said to be the forerunner of the Indonesian Parliament and the period of the formation of the Central Indonesian National Committee (KNIP).¹² It is one of the institutions that plays an important role in the implementation of democracy. The House of Representatives is separately regulated in Chapter VII "House of Representatives" which consists of four articles, namely Article 19, Article 20, Article 21 and Article 22.

Dahlan Thaib said that elections are a process of change of power that is conducted periodically under the principles laid down in the constitution.¹³ According to Dahlan Thaib, the holding of elections has a very important meaning as a regular stage in the change of power every five years. In the context of the DPR and DPD, it seems unnatural if the ruling party does not experience a more varied change, and this is the effect of the absence of term limits for the DPR and DPD. Elections play an irreplaceable role in providing a mechanism for regular transitions of power.

Regarding Law Number 8 of 2012 on the General Election of Members of the DPR, DPD, and DPRD, which regulates all requirements and mechanisms for the general election of members of the Legislative Assembly, there is no limit on the term of office of members of the Legislative Assembly. This shows that the law cannot provide for

¹¹ Jimly Asshidqie, *Konstitusi Bernegara Praksis Kenegaraan Bermartabat Dan Demokratis* (malang: Setara Press, 2015), 153.

¹² Jimly Asshidqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi*, Buana Ilmu Populer (Jakarta: Buana Ilmu Populer, 2007), 183.

¹³ Dahlan Thaib, *Ketatanegaraan Indonesia Perspektif Konstitusional*, Total Media, Yogyakarta (Yogyakarta: Total Media, 2009), 98.

term limits, as it focuses only on the conditions and mechanisms for holding elections. This issue was discussed during the working session of the Special Committee on the latest draft law, namely Bill Number 7 of 2017. In this discussion, it became clear that term limits should be a legislative responsibility as a form of democracy and freedom for everyone to participate in the democratic process, including the right to vote and be elected. Therefore, term limits for members of the legislature are not seen as something that urgently needs to be restricted. This is because, in principle, legislative elections should not hinder the participation of subjects who wish to participate in the general election.¹⁴

It is important to limit the term of office of members of the people's representative body so that the people are not always the same person. The legislative products produced by the members of the House of Representatives often do not meet quality standards and do not reflect the wishes of the public. One of the causes is the lack of innovation and improvement in the working system of the members of the people's representative institutions. Poor legislative performance is also reflected in the overabundance of laws and regulations in Indonesia. This is a matter of concern and anxiety for academics in universities, non-governmental organizations, local governments, including the central government. By the end of 2019, there will be at least 10,180 regulations with the following details: 131 laws, 526 government regulations, 839 presidential regulations to 8,684 ministerial regulations.¹⁵ "Regulatory obesity" raises new problems in the form of potential overlapping regulations, the burden of harmonizing and synchronizing laws and regulations, and the lack of institutions to monitor and evaluate.

This is in line with the view of Giovanni Sartori, who stated that the problem in the presidential system of government lies not only with the executive but also with the legislative power. Therefore, to overcome this challenge, it is necessary to consider limiting the term of office of the members of the representative body of the people.

¹⁴ "Risalah Rapat Kerja Pansus Rancangan Undang-Undang Tentang Penyelenggaraan Pemilu," n.d., 6.

¹⁵ Ni'matul Huda, *Kemunduran Demokrasi Pasca Reformasi*, FH UII Press, Yogyakarta, 2021, p. 107

Without any attempt to limit power, the government can become centralized and authoritarian.¹⁶

It is a serious concern that the limitation of power should be carried out by dividing it into several vertically structured branches of state power, such as the President as the executive, the House of Representatives as the legislature, and the Supreme Court and the Constitutional Court as the judicial institution. In this way, power is not centralized and is not concentrated in a single person, thus avoiding potential abuse. This limitation of power aims to prevent the abuse of power and establish *a mechanism of checks and balances* between the branches of power. This is the basis for understanding that giving power or supremacy to the House of Representatives without oversight and efforts to limit power will only create an institution of absolute power.

The problem of the absence of term limits for legislative members will certainly not be separated from the history of authoritarianism in the past in the form of abuse of power. There are many cases of abuse of power in circulation. As Dan Merriem has noted, "It is true that whoever has power, and no matter how well it is exercised, power has the potential of various diseases, as the classic maxim regarding the abuse of authority (power tends to corrupt, but absolute power corrupts absolutely) has not been disputed until now. The effects of this abuse of power tend to lead to corrupt behavior. Therefore, according to Mahfud MD, it is difficult to eradicate corruption because the Indonesian bureaucracy is an old bureaucracy that has inherited a very chronic corruption disease. The legislature, which is supposed to be involved in preventing corruption, is itself involved in corruption."¹⁷

If legislative members remain in office for a long time, there is a risk of conflicts of interest between their role as councilors and their personal interests. This is because legislative members who remain in power for a long time acquire great power and influence and are capable to influence policies to the benefit of certain individuals or groups. There is a strong correlation between long or non-renewable terms of office of

¹⁶ Saldi Isra, *Pergeseran Fungsi Legislasi* (Jakarta: RajaGrafindo Persada, 2010), 42.

¹⁷ Mahfud MD, *Hukum Tak Kunjung Tegak* (Bandung: PT. Citra Aditya Bakti, 2008), 7.

members of the legislature and corruption and abuse of power. This is due to several factors, including the opportunity for greater personal gain, lack of oversight and a tendency to retain power.

In addition, there are several latent effects of corruption, such as increasing poverty rates, disruption of public services, inadequate infrastructure conditions due to corrupt funds, disruption of the country's economy, and exploitation of natural resources that do not benefit the community.¹⁸ In a state of law, the law is an important instrument in the life of the nation, so there must be rules such as articles that regulate these regulations, especially when there is a legal gap.¹⁹

Furthermore, KPK reports show that there were 58 cases of members of the House of Representatives and the House of People's Representatives being involved in corruption cases from 2015 to 2019. This is something of a setback for Indonesia's growing democracy. Many corruption cases have involved officials in the legislative and executive branches, but this case has become a milestone for Indonesian democracy. In general, we realize that corruption is a habit that is ingrained in society as a culture of power. The stronger and more powerful a person is, the greater the risk of corruption. If they look for loopholes to commit corruption in their first five years in office, if they serve more than two or three terms, then they have mastered the role of committing corruption.

The existence of a framework for the pursuit of personal interests that provides political space is certainly detrimental to many parties and, of course, to the community. There have been some reactions to statements about corruption in Congress. Firstly, the intellectual system and atmosphere of the House of Representatives is rotten and dilapidated. When politicians enter the DPR, they have to feel at home with a dilapidated spiritual structure and atmosphere. The choice is

¹⁸ <https://djpb.kemenkeu.go.id/kppn/manokwari/id/data-publikasi/berita-terbaru/3026-tindak-pidana-korupsi-pengertian-dan-unsur-unsurnya>. Accessed on September 24, 2023 at 00:09.

¹⁹ Grace Anna and Belle Gosal, "Pembatasan Periodisasi Masa Jabatan Anggota Dewan Perwakilan Rakyat Dan Dewan Perwakilan Daerah Dalam Perspektif Hukum Konstitusional," *JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 4 (2023): 3657, <https://doi.org/10.24815/jimps.v8i4.26208>.

between going with the flow and getting a small benefit in the form of economic rent or trying to stay honest at the risk of being ostracized and seen as strange.

Based on the classical theory of state administration presented by Aristotle, the concept of the state of law (*rule of law*) emphasizes its difference from the concept of *the rule of man*, human beings who are above law and government. In a modern constitutional state, the characteristic of the *rule of law* (or *rechtsstaat*) is the restriction of power in the implementation of state government. These limitations are regulated by the legal system and form of the basis of modern constitutionalism. As expressed by Julius Stahl, the division or separation of powers is one of the important elements in the theory of the rule of law.²⁰

In principle, the Constitution stipulates that all citizens have the same right to participate in government, including as members of the representative body of the people. This principle reflects the dimension of justice in laws and regulations because it provides equal opportunities for citizens to participate in government. Titon Slamet Kurnia stated that in achieving justice, the law must be able to accommodate individual values as well as community values. This is very important because individuals always live together with their neighbors, and it is impossible to live in isolation.²¹

II. Term Limits as a Form of Fair Participation

The right to equal opportunities in government is guaranteed not only by the Constitution but also by the International Covenant on Civil and Political Rights. This convention not only guarantees rights and freedoms of a personal nature but also protects the rights of individuals as citizens, as participants in public affairs, as voters, and as public servants. Article 25 of the International Covenant on Civil and Political Rights states: All citizens shall enjoy rights and opportunities without the exceptions mentioned in Article 2 and without unreasonable restrictions:

²⁰ Anna and Gosal, 73.

²¹ Titon Slamet Kurnia, "Hukum Dan Keadilan: Isu Bagian Hulu Dan Hilir," *Refleksi Hukum: Jurnal Ilmu Hukum* 10, no. 1 (October 10, 2016): 23, <https://doi.org/10.24246/jrh.2016.v10.i1.p17-32>.

- a. To take part in the implementation of public works directly or freely elect representatives;
- b. To vote and be elected in a general election period where it must be universally and balanced and must be held in secret elections, guaranteeing freedom of expression from the will of the voters;
- c. To have opportunities in balanced general terms for public services in their country.

The clause "shall be treated universally and equally" in Article 25 (b) of the Covenant on Civil and Political Rights emphasizes the right of everyone, without discrimination, to participate in government, to vote and to be elected, and to receive adequate public services.²² The absence of term limits creates an imbalance between people who have just stood for election to the people's representative body and incumbent candidates. Incumbent candidates have access and facilities that are more conducive to conduct socialization and campaigns.

This condition is not the same as for regional leaders who are standing for re-election, who must comply with the rules on taking leave during the campaign period outside of state dependency and are prohibited from using state facilities related to their position. It is very unlikely that all members of the representative body will take leave and not use state facilities during the election period, given the large number of members of the people's representative body. The most likely way to achieve universal and balanced treatment of legislative candidates is to limit the term of office.

The issue of term limits for the DPR and DPD is significant, especially when viewed from the perspective of the history of authoritarianism in the New Order era. History shows that in many cases, those in power for a long time tend to abuse their power. Whoever is in control, no matter how well they do their job, power has the potential to be abused, in line with Lord Acton's classic principle that "power tends to corrupt, but absolute power corrupts absolutely", which is still relevant today.²³

²² Eko Riyadi, *Hukum Hak Asasi Manusia: Perspektif Internasional, Regional Dan Nasional* (Depok: Rajawali Pers, 2020), 89.

²³ Ellydar Chaidir, *Negara Hukum Demokrasi, dan Konstalasi Ketatanegaraan*, 15.

The idea of limiting the term of the legislature to a certain period needs to be considered in the context of Indonesia, where there are currently no restrictions on the legislature. At present, the legislature in Indonesia is experiencing a lack of innovation and a lack of improvement in its working system. This is in line with Giovanni Sartori's view that the challenges in presidential government do not come from the executive environment alone, but rather from the role of the legislative institution.²⁴

In practice, the public trusts the legislature in democratic processes. This means that everything is left to the people; if the people still want someone to represent them in parliament, they will elect him, and conversely, if the people do not want him, they will elect someone else. Overconfidence in democratic procedures is not good in practice. Democracy in a society that still glorifies partisanship and patriarchy, so that it often puts individuals in an unequal position, so that the choice is not made according to their conscience. Furthermore, the organizers (legislators) also tend to be corrupt, and will be completely corrupt if they are not placed in a strict system of rules to limit their power.

Historically, there are lessons to be learned from term limits for the president and vice president. Initially, the unclear formulation of Article 7 of the 1945 Constitution of the Republic of Indonesia allowed two presidents, Soekarno and Suharto, to remain in power beyond the constitutional limit. This problem further strengthened authoritarianism, especially during the Suharto administration, which led to his repeated election as president. After the constitutional amendment, Article 7 of the 1945 Constitution of the Republic of Indonesia was changed to "The President and Vice President shall hold office for five years, and thereafter may be re-elected to the same office, but only for one term".²⁵

The term of office for members of the MPR, DPR, DPD, and DPRD, which was previously unrestricted, has been changed and is now limited to 5 years, with the possibility of re-election for only one term. This term limit is intended to prevent abuse

²⁴ saldi Isra, *Pergeseran Fungsi Legislasi* (Raja Grafindo Persada, 2010), 42.

²⁵ Wa Ode Fatihatul Khaerunnaila, "Urgensi Pembatasan Masa Periode Anggota Dewan Perwakilan Rakyat Dalam Upaya Pencegahan Penyalahgunaan kekuasaan" *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, Vol. 4, No. 1, Juni 2018, hlm. 2

of power by members of the legislature and to make elections more competitive and participatory. This amendment was made to Article 7, which governs the term of office for MPR members; Article 76, which governs the term of office for DPR members; Article 252, which governs the term of office for DPD members; Article 318, which governs the term of office for provincial DPRD members; and Article 367, which governs the term of office for district/city DPRD members. The holder of power tends to become dominant and tries to strengthen his position so that his power remains firm, so they try to maintain this dominance. Therefore, the law plays a role in limiting the power of a state.²⁶

III. Elections as a Means of Periodic Change of Power

Fair elections are elections organized by independent institutions that are carried out based on the law, are fair to all parties, and maintain integrity.²⁷ The concept of fair elections is based on the fifth principle of Pancasila as its philosophical foundation, which can be interpreted to mean that all citizens have equal rights, especially the right to vote and be elected.²⁸

In terms of its advantages, the absence of regulations limiting the term of office of members is useless, except for the accumulation of political power to produce legislative products. Legislation is one of the functions of the DPR, the DPD and the DPRD, in addition to oversight and budgetary functions. The function of legislation itself is the function of regulating and establishing laws.²⁹ In carrying out this function, the President also has a very important role to play in proposing, debating, approving and ratifying.³⁰ An agreement is needed between the House of Representatives and the President is needed for the bill to go through the negotiation process.

²⁶ Mirriam Budiardjo and Ibrahim Ambong, *Fungsi Legislatif Dalam Sistem Politik Indonesia* (Jakarta: raja grafindo persada, 1993), 214.

²⁷ Khairul Fahmi, "Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945," *JURNAL CITA HUKUM* 4, no. 2 (December 2, 2016), <https://doi.org/10.15408/jch.v4i2.4098>.

²⁸ Fahmi.

²⁹ Wisnu Nugraha, "Fungsi Legislasi Menurut Undang-Undang Dasar Tahun 1945 (Studi Kasus Badan Legislasi DPR RI Periode 2004-2009)," *Binamulia Hukum* 7, no. 2 (2018): 159.

³⁰ UUD NRI 1945, Pasal 20

The bad image of the House of Representatives in the reform era can be seen from the opinion polls conducted by Kompas Daily on 24 and 25 October 2001 on the bad image of the House of Representatives in the reform era. The survey showed that 59.6% of the respondents did not like the performance of the House of Representatives in the reform era. In the next elections held on 30-31 May 2002, the image of the House of Representatives worsened. In terms of bad image, 77.0% of respondents rated it better than in the previous survey.³¹ For example, in other countries like the United States, people who sit in the legislature are people who want to serve the country, not work for the country. That is, those who sit in parliament are people who already exist and no longer think about personal interests. Therefore, the limitation of the term of office is necessary for the members of the legislature as a form of substantive legal certainty. One of the proposals is to set a two-term limit, and of course this is being done under pressure from various elements of society or civil society, such as non-governmental organizations (NGOs) and others.

Citizens also have an interest in accessing the democratic space opened up by the Constitution. The Constitution states that our country is a democracy based on the rule of law and that sovereignty is in the hands of the people. The Constitution opens the space for the public to access the democratic space, but the current democratic space is open because the rulers have obscured the space. Through the constitution, only the representatives of the people, the politicians, can secretly pass through the space of corruption. Access to democracy is presented by politicians as if it were democracy, when it is very conservative.³²

If we compare the practice in other countries, we can take the example of the Philippines. The Philippines limits the number of parliaments with the aim of destroying political dynasties, but in practice this goal is not achieved.³³ In addition, the existing government does not directly affect the influence of political power over national resources, land, employment, and others. Bolivia is a country that used to

³¹ Nugraha, 2–3.

³² Muhammad Al Kautsar, “Pembatasan Periodisasi Masa Jabatan Anggota Legislatif,” *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 3, no. 3 (August 2019): 270.

³³ Al Kautsar, “Pembatasan Periodisasi Mas Jabatan Anggota Legislatif.”

play by the rules but has now changed them. The abolition of re-election applies not only to council members, but also to the president, governor, and mayor.³⁴

As part of public office, the opportunity for the DPR, DPD, and DPRD to be re-elected must be limited. This is nothing but the embodiment of the spirit of democratic principles and the limitation of power in the 1945 Constitution of the Republic of Indonesia. The Constitutional Court in its decision Number 8/PUU-VI/2008 emphasized:

“...The restriction is open to the legislature as a political choice, so it does not contradict the 1945 Constitution. If, on the other hand, such a restriction is contrary to the 1945 Constitution, as the petitioner postulates, so that the article in question must be declared to have no binding legal force, then there will be no more restrictions. Such restrictions are necessary to realize the implementation of democratic principles and limitations of power, which are actually the spirit of the 1945 Constitution.”

As an institution that represents the people, the mechanism for electing members of the House of Representatives and the DPD is automatically determined by the people through elections. Furthermore, the mechanism used is the same as that used to elect the President and Vice-President. In terms of term limits, the DPR and DPD should also be applied because it will be a problem if there are no limits on their positions. Mohammad Ilham Agang in his dissertation entitled "Limitation of the Term of office of Regional Heads in the State Government System of the Republic of Indonesia" gave an opinion on the purpose of limiting the term of office of Regional Heads, namely, first: "to minimize the occurrence of abuse of authority". Second: "to provide opportunities and space for others to run for office with all their capacity and integrity".³⁵

Since the periodization of the legislative members' term of office is not limited in the 1945 Constitution and the Law, it opens a very wide space for the legislative members to be in power for life until the aspect of democracy does not provide good political

³⁴ Pablo Queubin, "Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines," 2012, n.d., 26.

³⁵ Mohammad Ilham Agang, "Pembatasan Masa Jabatan Kepala Daerah Dalam Sistem Pemerintahan Negara Republik Indonesia" (Disertasi, Universitas Airlangga, 2016).

education and harms the spirit of democracy. The regulation of the term of office of the members of the legislature will create a national political system that is fair, legal, honest, and civilized. According to the theory and empirical facts that exist, if a person has the opportunity and chance to occupy and hold the same position or office for a long time without any time limit, he will tend to act and behave arbitrarily. This can be detrimental to people who want to compete to become members of the legislature.

The legislature has a prominent position as an institution of people's aspirations in accordance with democratic principles. Democracy can deteriorate if the power continues because democracy requires regular rotation of power. Therefore, it would be more appropriate to limit the terms of DPR and DPD members. The erratic tenure of DPR and DPD members may hinder the renewal of the leadership in the legislature, resulting in the institution not being able to develop significantly. If there is no term limit for members of the legislature, namely the MPR, DPR and DPD, it will create a legal vacuum in Indonesia's democratic system. This is contrary to the principle of democracy, which requires a regular change of power.

In principle, the Constitution stipulates that every citizen has the right to equal opportunities in government. Democracy is closely related to people's sovereignty, so it is important to manage and maintain people's sovereignty effectively so that people can realise their essence and purpose in life. However, sometimes the existence of people's sovereignty, which belongs to the people, can be damaged, cannot be implemented according to the people's wishes, and the sovereign rights granted by the people can be eroded by authoritarian government practices whose power is not limited by law.³⁶

IV. The Comparison of Parliamentary Term Limits with Other Countries

According to the Malaysian Constitution, the term of Parliament is five years, after which it is dissolved. Malaysia uses a first-past-the-post electoral system, which is implemented by the Election Commission of Malaysia. The term limit in Malaysia should reflect the considerations in determining the term of office of the DPR, MPR,

³⁶ Azmi, "Kedaulatan Rakyat Dalam Perspektif Negara Hukum Yang Berketuhanan," 2818 35 (n.d.): 76.

and DPD RI in Indonesia. On the other hand, there is no balance between the legislature and the executive. The executive can only exercise its power for two periods, i.e. there are restrictions, while the legislature has no restrictions based on Article 76 Paragraph (4) of the MD3 Law, which stipulates that the term of office of parliamentarians is five years and will end when the newly inaugurated parliamentarians.

The existence of the institutions of the House of Representatives plays a significant role in the exercise of its executive functions, including legislation, oversight, representation and advocacy. However, in addition to the three functions listed in the 1945 Constitution of the Republic of Indonesia, there are other functions attached to the DPR, including the function of representative and the function of filling public positions. As a representative institution, the House of Representatives is a "representative" of the people. Therefore, the existence of the House of Representatives reflects the diversity that exists in society. This means that, in their representative function, members of the House of Representatives must strive to maintain a connection between the ideas at the level of the people they represent and those that are fought for in every decision made in the House of Representatives. This connection is manifested in the implementation of the constitutional functions of the House of Representatives as stipulated in Article 20 A paragraph (1) of the 1945 Constitution of the Republic of Indonesia.³⁷

The effort to limit the power of the legislature is a way of implementing the characteristics of the contemporary rule of law. Referring to the formulation of the International Conference of The Institute of World Justice 2011, the term limit of the parliament is worthy to be used as a parameter to provide a more comprehensive and updated picture of the state of law by today's global demands. As a state of law, Indonesia is required to implement term limits.

Looking at the practice of Indonesian constitutionalism, one of the judicial institutions, namely the Constitutional Court, limits the term of constitutional judges to two terms.

³⁷ Saldi Isra, *Lembaga Negara : Konsep, Sejarah, Wewenang Dan Dinamika Konstitusional* (Jakarta: Raja Grafindo Persada, 2020), 115–17.

This is stipulated in Article 22 of Law Number 24 of 2003 on the Constitutional Court, which clearly states that "the term of office of a Constitutional Court judge shall be 5 (five) years and he/she may be re-elected only for 1 (one) subsequent term". The concept of term limits is especially important, and it would be ironic if members of the House of Representatives and the DPD were not subject to term limits. Therefore, the idea of introducing a two-term limit for members of the House of Representatives and the DPD can be considered relevant.

Therefore, efforts to set term limits and regulate the tenure of a government official become relevant. This is not only a manifestation of the core implementation of a democratic rule of law, but also an implementation of the essence of limiting the power inherent in a government official.

Limiting the term of office in the legislature is necessary as a form of substantive legal certainty. One of the proposals is to set a time limit of two terms for filling a position, if we look at the practice of filling positions in other institutions (read: president, constitutional judges).

The implication of the lack of term limits for members of parliament is that it is difficult to change power because the same person occupies the position. In other words, the old framework tends to be conservative. Of course, if the framework is a negative framework, then the corrupt framework will get worse, weakening the negative power of the state. A corrupt framework is not only corruption in the fiscal sphere, but also corruption in the political sphere, which means that politics is avoided in favour of individual and collective interests, and this is done to maintain power. No laws are made to limit power, because its strong power also regulates those who can maintain personal power. This is because it is bound to be detrimental to individual interests and the interests of the nation.

Another implication of the absence of term limits for legislators is that it creates a democracy that leads to capital democracy. Of course, it will be difficult to deal with people who have the capital to access democracy and who have been in power for a long time. This is difficult for those who are new to politics and do not have enough

political capital to compete for parliamentary seats.³⁸ In addition, the absence of term limits means that there is a high probability that some members will not perform their duties in accordance with the core responsibilities given to them.

According to the author, the absence of term limits in the legislature is a problem. In addition, public confidence in the legislature is low. The lack of renewal of representation is not accompanied by clear accountability. This can lead to corrupt behaviour.

CONCLUSION

Term limits for legislators can prevent abuse of power because it makes legislators more responsible in performing their duties. Legislators will be more careful in making decisions because they know they have a limited time. In addition, term limits can also open up opportunities for new legislators who are fresher and have innovative ideas to move Indonesia forward. And term limits for legislators can also create healthy competition in elections. This is because there will be more legislative candidates vying for seats in parliament. This healthy competition will encourage legislative candidates to offer better programmes to the public.

Finally, term limits for legislators can increase public participation. This is because people will be more interested in participating in elections if they know that they can elect new legislators. This increase in public participation in elections is a manifestation of popular sovereignty.

REFERENCES

- Asshidqie, Jimly. *Konstitusi Bernegara Praksis Kenegaraan Bermartabat Dan Demokratis*. Malang: Setara Press, 2015.
- Asshidqie, Jimly. "Perihal Undang-Undang Di Indonesia, Sekretariat Jenderal Mahkamah Konstitusi RI,"
- Asshidqie, Jimly. *Pokok-Pokok Hukum Tata Negara Indonesia Pascara Reformasi*, Buana

³⁸ Muhammad Al Kautsar, "Pembatasan Periode Masa Jabatan Anggota Legislatif" Wawancara Dengan Zainal Abidin, S.H., M.Si," 2019 3 (N.D.): 367.

- Ilmu Populer*. Jakarta: Buana Ilmu Populer, 2007.
- Azmi. "Kedaulatan Rakyat Dalam Perspektif Negara Hukum Yang Berketuhanan." 2818 35
- Budiardjo, Mirriam. *Dasar-Dasar Ilmu Politik*. 1992,
- Budiardjo, Mirriam, And Ibrahim Ambong. *Fungsi Legislatif Dalam Sistem Politik Indonesia*. Jakarta: Raja Grafindo Persada, 1993.
- Chaidir, Ellydar. *Negara Hukum Demokrasi, Dan Konstalasi Ketatanegaraan*. Jakarta: Total Media, 2007.
- Fahmi, Khairul. "Menelusuri Konsep Keadilan Pemilihan Umum Menurut UUD 1945." 2016,
- Isra, Saldi. *Lembaga Negara : Konsep, Sejarah, Wewejnang Dan Dinamika Konstitusional*. Jakarta: Raja Grafindo Persada, 2020.
- Isra, Saldi. *Pergeseran Fungsi Legislasi*. Raja Grafindo Persada, 2010.
- Kautsar, Muhammad Al. "Pembatasan Periodesasi Masajabatan Anggota Legislatif." 2009 3
- Kautsar, Muhammad Al. "Pembatasan Periodesasi Masajabatan Anggota Legislatif" Wawancara Dengan Zainal Abidin, S.H., M.Si." 2019
- MD, Mahfud. *Hukum Tak Kunjung Tegak*. Bandung: PT. Citra Aditya Bakti, 2008.
- Nugraha, Wisnu. "Fungsi Legislasi Menurut Undang-Undang Dasar Tahun 1945 (Studi Kasus Badan Legislasi DPR RI Periode 2004-2009." 2018,
- Queubin, Pablo. "Political Reform And Elite Persistence: Term Limits And Political Dynanties In The Philippines." 2012,
- Raga Maran, Rafael. *Pengantar Sosiologi Politik*. 2001,
- "Risalah Rapat Kerja Pansus Rancangan Undang-Undang Tentang Penyelenggaraan Pemilu," 6,
- Soekanto, Soerjono, And Sri Mamuji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada,
- Thaib, Dahlan. *Ketatanegaraan Indonesia Perspektif Konstitusional*, Total Media, Yograkarta. Yogyakarta: Total Media, 2009.