

## **Constitutional Imperatives: Examining the Urgency of Term Limits for Members of the House of Representatives**

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### **Abstract**

UUD NRI 1945 is the highest law in Indonesia's hierarchy of rules and regulations. One of the principles adopted by the UUD NRI 1945 is the principle of constitutionalism. Proof that the UUD NRI 1945 adheres to the principle of constitutionalism can be proven by the existence of Article 7, Article 23E, Article 24A, Article 24B, and Article 24C of the UUD NRI 1945. Meanwhile, the DPR, one of the state institutions mentioned in Chapter VII of the UUD NRI 1945, does not regulate term limits. This research explains the urgency of regulating term limits for DPR members from a constitutionalism perspective. This normative legal research uses a statutory, conceptual, case, and comparative approach. The results of this research show that the absence of regulations regarding term limits for members of The House of Representative in the UUD NRI 1945 is not in accordance with the principles of constitutionalism adopted by the UUD NRI 1945. The urgency of limiting the terms for members of the House of Representative is to: (1) uphold the principles of constitutionalism, (2) prevent arbitrary actions, (3) realize legal certainty, (4) improve the implementation of democracy in Indonesia, (5) prevent authoritarianism, and (6) Carrying out regeneration.

## **1. Introduction**

To show the originality of this research, several previous studies are described, namely first: The Urgency of Limiting the Terms of Service for Members of the House of Representative and the Regional Representative Council of the Republic of Indonesia by Ferdy Putra Ernawan and Ahmad Sholikhin Ruslie.<sup>1</sup> This article focuses in a study regarding the urgency of limiting the terms of office of members of the Dewan Perwakilan Rakyat (DPR) and Dewan Perwakilan Daerah (DPD) in general. The topic studied is similar to this research, namely related to limiting the term of office of DPR members, however the focus of discussion and analysis of this research is only on the term of office of DPR members and from a constitutionalism perspective. Second, the Urgency of Limiting the Periodization of Terms of Office for Legislative Members in the Perspective of Indonesian Legal Political Configuration by Yudi Junadi, Dedi Mulyadi, M. Rendi Aridhayandi, and Christopher Surya Salim.<sup>2</sup> This article focuses on the study of limitations on the periodization of legislative members' terms of office in general and from the perspective of political configuration. Still, this article is too broad, whereas the focus of discussion and analysis of this research is only on the terms of office of DPR members and from the perspective of constitutionalism. Third, Limitations on the Periodization of Terms of Office for Legislative Members by Muhammad Al Kautsar.<sup>3</sup> This article focuses on studies regarding limitations on the term of office of legislative members in

<sup>1</sup> Ferdy Putra Ernawan and Ahmad Sholikhin Ruslie, "Urgensi Pembatasan Masa Jabatan Anggota Dewan Perwakilan Rakyat Dan Dewan Perwakilan Daerah Republik Indonesia" 3, no. 2 (2023): 1095–1108.

<sup>2</sup> (Junadi and others 2021)

<sup>3</sup> Muhammad Al Kautsar, "Pembatasan Perodesasi Masa Jabatan Anggota Legislatif" 3, no. 3 (2019).

general. Still, this article is too broad, whereas the focus of discussion and analysis of this research is only on the term of office of DPR members and from a constitutionalism perspective.

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the UUD NRI 1945) is a written constitution which is also the highest law in the hierarchy of laws and regulations in Indonesia (the supreme of the land).<sup>4</sup> UUD NRI 1945 was first ratified as the constitution of the Indonesian state at the session of the Preparatory Committee for Indonesian Independence on 18 August 1945 or the day after the independence of the Republic of Indonesia, which Soekarno and Mohammad Hatta proclaimed on 17 August 1945. UUD NRI 1945 generally regulates the limitations of power, structure, composition, power and basic functions of the highest state organs, such as the judiciary, legislature, executive and other state institutions. Apart from that, the 1945 Constitution of the Republic of Indonesia also regulates important matters such as citizens' rights, which are called constitutional rights.

One of the principles adopted by UUD NRI 1945 is the principle of constitutionalism. Constitutionalism is the understanding or idea that government power needs to be regulated and limited so that the exercise of state power remains orderly.<sup>5</sup> Constitutionalism itself consists of two words, namely constitution and ism. According to Black's Law Dictionary, the constitution is "The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers" (the fundamental law of a nation or state, both written and unwritten, which determines the character and its conception of government, lays down the basic principles to be adapted to its internal life, organizes the government, and regulates, distributes, and limits the functions of its different departments, and determines the extent and manner of the exercise of sovereign power". Meanwhile the ism is an understanding or idea.

Proof that UUD NRI 1945 adheres to the principle of constitutionalism can be proven by the existence of Article 7 of UUD NRI 1945 which regulates the limitation of the term of office of the President, then Article 23E which regulates the limitation of the term of office of members of the Supreme Audit Agency (BPK), then there is also in Article 24A of UUD NRI 1945 which regulates the limitation of the term of office of Judges of the Supreme Court (*Mahkamah Agung*). There is Article 24B of UUD NRI 1945 which regulates the limitation of the term of office of Members of the Judicial Commission (*Komisi Yudisial*), and finally in Article 24C The 1945 Constitution of the Republic of Indonesia regulates the limitation of the term of office of Constitutional Court (*Mahkamah Konstitusi*) Judges. Although everything is not regulated directly in the 1945 Constitution of the Republic of Indonesia, the limitations on the terms of office of the above institutions are further regulated in the Law, such as the Supreme Audit Agency, Supreme Court, Judicial Commission and Constitutional Court.

Meanwhile, the House of Representative (hereinafter referred to as the DPR), one of the state institutions mentioned in Chapter VII of UUD NRI 1945, does not regulate this matter directly in UUD NRI 1945 or in law. Even though this power has the potential to be used arbitrarily by those in power, it does not rule out the possibility of this being done by the DPR due to the absence of any limitations on the term of office of DPR members themselves. The lack of regulations regarding this means that current DPR members can be re-elected for up to 3 (three) terms or even more, provided that as long as the people still like and believe in the

<sup>4</sup> Ahmad Fadlil Sumadi, "Mahkamah Konstitusi Dan Kontrak Outsourcing," *Jurnal Konstitusi* 9, no. 1 (2016), <https://doi.org/10.31078/jk911>.

<sup>5</sup> (Asshiddiqie 2018)

legislative candidate, they can rule forever. This will certainly negatively impact our constitutional system, whether it is used to act arbitrarily or can give rise to severe political problems.<sup>6</sup>

Meanwhile, suppose we return to the principles of constitutionalism adopted by UUD NRI 1945. In that case, they should be given clear boundaries, such as the provisions in Article 7 of UUD NRI 1945 which limits the President's term of office to only 5 (five) years. After that they can be re-elected in the same position, only for one term of office. Suppose you look at research conducted by Herman Dirgantara. In that case, it is found that in various countries there are regulations regarding term limits for members of the DPR, including Ecuador, Bolivia, Costa Rica and the Philippines. Ecuador and Bolivia limit that legislative institutions cannot serve more than 2 (two) terms, specifically in Ecuador one term of office is 4 (four) years.<sup>7</sup> Meanwhile in Costa Rica it is limited that members of parliament or the National Assembly (diputados) 3 serve for 1 (one) term. Meanwhile, in the Philippines, the term of office of the DPR or House of Representatives is limited to a maximum of 3 (three) terms. This is regulated in the Philippine Constitution in Article VI, Sections 4 (four) and 7 (seven).

Seeing this, it would be strange if Indonesia, which considers UUD NRI 1945 as the highest law and adheres to the principles of constitutionalism, does not regulate the limitations of power, especially regarding the term of office of members of the DPR. The absence of regulations regarding the term of office of DPR members in the 1945 Constitution of the Republic of Indonesia has legal consequences for providing good government. This is because UUD NRI 1945 as the highest law adheres to the principle of constitutionalism, which should be given clear limits on power. Based on these problems, it is necessary to look for and analyze the absence of regulations regarding the term of office of DPR members in UUD NRI 1945 in constitutionalism perspective. It is hoped that the regulations regarding the terms of office of DPR members will be found in accordance with the principles of constitutionalism, as well as knowing the urgency of limiting the terms of office of DPR members. So that it will no longer give rise to ambiguous constitutional practices and tend to ignore the principles of constitutionalism.

## 2. Methods

This research is legal, namely a process to find a truth, coherence or legal rules, legal principles and doctrines to answer the legal issues faced.<sup>8</sup> The type of legal research used is normative legal research. The problem approaches used are statutory, conceptual, case and comparative approach.<sup>9</sup> The sources of legal materials used in this research are primary legal materials and secondary legal materials. The primary legal materials used in this research consist of statutory regulations, namely UUD NRI 1945, Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representative, the Regional Representative Council, and the Regional People's Representative Council, and Laws Number 13 of 2019 concerning the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council. Apart from the primary legal materials in the form of statutory regulations above, this research also uses other primary legal materials, namely official records or minutes in making legislation and court decisions with permanent legal force or *incracht*. Meanwhile, the sources of secondary legal materials are

<sup>6</sup> Dan Greenberg, "Term Limits: The Only Way to Clean Up Congress," The Heritage Foundation, 1994.

<sup>7</sup> Ahmad Daniel Kusumah Anshary, "Perang Ekuador Dan Peru Tahun 1995," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 2 (2021).

<sup>8</sup> (Marzuki 2021)

<sup>9</sup> (Marzuki 2021)

legal books and journals. After the legal materials are collected, the legal materials are analyzed normatively so that answers to the problems in this research are found.

### 3. Results and Discussion

The DPR is one of the most important state institutions in the Indonesian constitutional system. In accordance with the mandate of Article 20A paragraph (1) of UUD NRI 1945, the DPR has legislative, budgetary and supervisory functions. The legislative function emphasizes the position of the DPR as a legislative institution that exercises the power to form laws. In terms of legislative or regulatory functions, there are three important things that the DPR must regulate, namely: (i) regulations that can reduce the rights and freedoms of citizens; (ii) arrangements that could burden citizens' assets; and (iii) regulation of expenditures by state administrators. Regulations regarding these three things can only be done with the citizens' consent, namely through the intermediary of their representatives in parliament as the people's representative institution.<sup>10</sup> Meanwhile, the budget function emphasizes the position of the DPR to discuss including amending the RAPBN and establishing a APBN aimed at the welfare of the people. The supervisory function is the function of the DPR in supervising the implementation of laws, budgets, as well as government and development policies by the government.

In the Indonesian democratic system, the DPR is one of the state institutions in Indonesia which represents the people in making political decisions. The position of the DPR in the democratic system in Indonesia is very important, because the DPR is used as the people's representative in carrying out democratic government. Apart from that, the position of the DPR is very important because the DPR is the people's representatives who the people directly elect through general elections. The people can express their aspirations and interests through the DPR and elect leaders who can represent them. However, it is important to remember that the DPR must also be able to carry out its functions well and respond to the people's trust by producing decisions that favor the people's interests. Therefore, the DPR must be able to work independently, professionally and transparently in carrying out its duties.

The DPR as one of the state institutions explicitly regulated in UUD NRI 1945 is not balanced with regulations regarding limitations on the periodization of DPR members' terms of office. Whether directly in UUD NRI 1945 or in Law no. 17 of 2014. However, if we look at the provisions of Article 76 paragraph (4) of Law no. 17 of 2014 states that the term of office of members of the DPR is 5 (five) years and ends when the new DPR member takes the oath/promise. The provisions of the a quo article explain that the term of office of members of the DPR is unlimited, as long as the people still have confidence in the legislative candidate. However, let's look back at UUD NRI 1945 as a written constitution and at the same time being the highest legislation in Indonesia that adheres to constitutionalism principles. This should need to be limited.

Regulation of the term of office of DPR members in Article 76 paragraph (4) of Law no. 17 of 2016 is an unclear regulation, does not provide legal certainty, and is not in accordance with the principles of constitutionalism. The ideal term limitation arrangement as adhered to by the principle of constitutionalism is a limitation that explicitly states the number and periodization of the term of office. If you only mention numbers and don't mention the period then it is still unclear. However, if you look at the principle of constitutionalism, the term of office of DPR members should be regulated explicitly in the form of numbers and periodization in the constitution.

After the amendments to UUD NRI 1945 have at least brought a new direction in implementing a balanced Indonesian constitutional system, this can be proven by

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<sup>10</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Depok: Rajawali Pers, 2019).

strengthening the position of the DPR. Strengthening the position of the DPR took place in the first stage of changes, up to the third stage of changes to UUD NRI 1945.<sup>11</sup> One piece of evidence that there is a strengthening of the DPR's position is in terms of legislative authority. Before the changes were made, the DPR only had pseudo legislative authority, even Saldi Isra called this a "rubber stamper" in forming laws.<sup>12</sup> Because the DPR's authority is limited to approving the President's power in forming laws. It is not only in terms of legislative authority that is proof that the DPR has strengthened its position, but also other things, for example, the DPR after the amendments to the 1945 Constitution of the Republic of Indonesia became the deciding institution to approve to state agendas, such as in the case of the President asking for the DPR's approval to declare war. make peace and agreements with other countries, and establish a Perpu [vide Article 11 paragraph (1) and Article 22 of UUD NRI 1945].

Strengthening the position of the DPR through the process of amending UUD NRI 1945 is very unfortunate. Because this is not balanced with regulations regarding the maximum term limit for members of the DPR. Let's look at the minutes of amendments to UUD NRI 1945. We can find a proposal regarding the term of office of members of the DPR, which came from the Fraksi Partai Bulan Bintang (F-PBB) representative or spokesperson Hamdan Zoelva, on that occasion Hamdan Zoelva said:

"Ladies and gentlemen. Regarding this DPR, it's up to you what articles you want to include in it, we'll arrange it later, then what's important is the substance regarding the DPR. In this part of the DPR, we regulate as follows: Paragraph (1): "The term of office of members of the House of Representatives is five years." Paragraph (2): "There are 500 members of the House of Representative who are elected through direct, general, free, secret, honest and fair elections."

This proposal did not become part of the discussion after that, so the discussion regarding the terms of office of DPR members stopped there. If the proposal becomes a debate and further discourse, various proposals will likely emerge to limit the term of office of members of the DPR, as is the case when discussing the President. For the author, both the President and the DPR have the potential to carry out arbitrary actions (abuse of power). Both are not only sufficient to be seen from a single position or multiple positions as per legal considerations [3.16] in Constitutional Court Decision Number 14-17/PUU-V/2007 which states that:

"Limiting the term of office of the President cannot be equated with limiting the term of office of members of the DPR and DPRD because the nature of the office of the two positions is different. The president is a single position (the author's bottom line) with full authority to exercise government power, so restrictions are needed to avoid arbitrariness. Meanwhile, members of the DPR and DPRD are plural positions (the author's bottom line) where every decision to exercise their authority is carried out collectively, so it is necessary to impose restrictions to avoid arbitrariness. This is the internal policy of each political party which does not conflict with the constitution. "Therefore, limitations on the President's term of office are strictly regulated in the UUD NRI 1945."

However, it must be seen from the rights and authority of the two power holders, namely that they both have the potential to be misused. The DPR itself has 3 main functions, namely the legislative function (legislative initiation, law making process, law enactment approval, binding decision making on international agreements and treaties or other legal binding documents), the budget function, and the supervisory function (control of policy

<sup>11</sup> Patrialis Akbar, *Lembaga-Lembaga Negara Menurut UUD NRI Tahun 1945* (Jakarta: Sinar Grafika, 2013).

<sup>12</sup> Saldi Isra, "Amandemen Lembaga Legislatif Dan Eksekutif, Prospek Dan Tantangan," *Unisia* 49, no. III (2003).

making, control of policy executing, control of budgeting, control of budget implementation, control of government performance, control of political appointment of public officials). DPR members can misuse the three main functions of the DPR if they serve too long, because they are no longer focused on the function they are carrying out but rather how the people can re-elect them and not dismissed midway by the proposing political party or this is normal. They are known as inter-time alternation (*Pergantian Antar Waktu*).

The failure to discuss regulations regarding term limits for members of the DPR at the time of UUD NRI 1945 cannot be interpreted as having become something ideal and final. Because in essence, the principles of constitutionalism adopted by UUD NRI 1945 regulate 3 (three) important things, namely: (i) determining limitations on the power of state institutions, (ii) regulating the relationship between one state institution and another, and (iii) regulate power relations between state institutions and citizens.<sup>13</sup> If Indonesia is deemed not to adhere to the principles of constitutionalism, then there will be no changes to Article 7 of UUD NRI 1945.

Meanwhile, in various countries that adopt a presidential system, such as the Philippines, they strictly regulate the term limits for members of the DPR in their constitutions, namely in Article VI, Section 4 which reads as follows:

“The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirteenth day of June next following their election.”

“No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered an interruption in the continuity of his service for the full term for which he was elected.”

In addition to the provisions in Article VI, Section 4 above, the Philippine Constitution also states firmly that the term of office of members of the House of Representatives cannot exceed 3 (three) consecutive terms. This is as reiterated in Article VI, Section 7 which reads as follows:

“The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.”

“No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered an interruption in the continuity of his service for the full term for which he was elected.”

The provisions in Article VI, Section 4 and Section 7 of the Philippine Constitution above prove that in a country that adheres to a presidential system it is synonymous with limitations on power. The Philippine Constitution was last amended during the leadership of President Mrs. Corry Aquino. President Corry proposed creating a new constitution to change the situation in the country which he felt was experiencing a shift in state principles and which was no longer in accordance with the constitution. Therefore, President Corry formed a commission called The Constitutional Commission of 1986. The constitution formed by this commission included limitations on the terms of office of the Senate and House of Representatives.

Even currently in the United States there is a proposal to limit the term of office of members of Congress through a constitutional amendment, as proposed by US Senator Ted Cruz (R-Texas) and Rep. Ralph Norman (R-S.C.). U.S. Sen. Ted Cruz (R-Texas) and Rep. Ralph Norman (R-S.C.) then introduced an amendment to the United States Constitution to impose term limits on members of Congress. The amendment would limit United States Senators to

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<sup>13</sup> (Asshiddiqie 2018)

two six-year terms and Members of the U.S. House of Representatives to three two-year terms after the effective date. Sen. Cruz said that:<sup>14</sup>

“Term limits are critical to fixing what’s wrong with Washington, D.C. The Founding Fathers envisioned a government of citizen legislators who would serve for a few years and return home, not a government run by a small group of special interests and lifelong, permanently entrenched politicians who prey upon the brokenness of Washington to govern in a manner that is unaccountable to the American people. Terms limits bring about long overdue accountability. I urge my colleagues to advance this amendment to the states so that it may be quickly ratified and become a constitutional amendment.”

Then Rep. Ralph Norman stated that:

“Elected office should represent a short-term privilege of public service, not a career choice. Those of us in Congress should serve for a reasonable period and then return home to live under the laws we enacted. I've proposed a constitutional amendment to establish term limits in the legislative branch. I am honored that Sen. Cruz introduced a companion bill in the Senate. This effort will go a long way to impact American politics positively, and I appreciate Sen. Cruz's leadership on this important issue.”

This then received the attention of other senators, including J.D. Vance (R-Ohio), Bill Hagerty (R-Tenn.), Cynthia Lummis (R-Wyo.), Roger Marshall (R-Kan.), Mike Lee (R-Utah), Steve Daines (R-Mont.), Todd Young (R-Ind.), Mike Braun (R-Ind.), Rick Scott (R-Fla.), Josh Hawley (Mo.), and Tommy Tuberville (R-Ala.). Bill Hagerty reiterated this by saying, "The Founders intended serving as a Member of Congress to be just that—service, not a career. Setting term limits for senators and representatives is a step toward ensuring that Washington works for the American people, not for itself." Then by Nick Tomboulides as executive director of U.S. Term Limits concludes that “Supermajorities of Republicans and Democrats favor term limits because they know Congress will never be fixed without it. We applaud Sen. Cruz for continuing to lead on this issue.”

The DPR is indeed a plural position, which is different from the President and/or Vice President which are single positions. However, this also does not rule out the possibility for DPR members to act arbitrarily (abuse of power). Arbitrary actions (abuse of power) can not only be carried out individually or individually but can also be carried out collectively as long as one has power. This is as stated by Lord Action with the adage "power tends to corrupt, absolute power corrupts absolutely". This adage illustrates that the stronger the power one has, the greater the potential for acts of corruption. One contemporary proof that members of the DPR act arbitrarily (abuse of power) because they are filled with people who have served for a long time is when the DPR makes laws using methods that have never previously been adopted, namely when making Law Number 11 of 2020 regarding Job Creation. The above is a form of arbitrary action (abuse of power) carried out by the DPR.<sup>15</sup> This is none other than because the DPR members are filled with people who have served for a long time. If this is done with restrictions and new people appear, the DPR will likely be more serious in overseeing the wheels of government.

Seeing the above, it is necessary or urgent to regulate the term limits for members of the DPR, either in the form of periodic or age restrictions. Because these two things currently apply to various state institutions explicitly regulated by the 1945 Constitution of the Republic of Indonesia. Thus, the urgency of regulating the term limits for members of the DPR is:

<sup>14</sup> Ted Cruz, “Sen. Cruz Introduces Constitutional Amendment to Impose Term Limits for Congress,” Senator Ted Cruz, 2023.

<sup>15</sup> (Solekhah and others 2021)

### 3.1 A Comprehensive Exploration to Uphold Constitutionalism Principles

One of the principles adopted by UUD NRI 1945 is the principle of constitutionalism. Constitutionalism is the understanding or idea that government power needs to be regulated and limited so that the exercise of state power remains in order.<sup>16</sup> Constitutionalism itself consists of two words, namely constitution and ism. According to Black's Law Dictionary, the constitution is "The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers" (the basic law of a nation or state, both written and unwritten, which determines the character and its conception of government, lays down the basic principles to be adapted to its internal life, organizes the government, and organizes, distributes, and limits the functions of its different departments, and determines the extent and manner of the exercise of sovereign power".<sup>17</sup> Meanwhile the ism is an understanding or idea.

In the presidential government system, fixed term implies that the term of office and periodization of the term of office must be fixed or fixed.<sup>18</sup> In Article 76 paragraph (4) Law no. 17 of 2014 which states that "The term of office of DPR members is 5 (five) years and ends when the new DPR member takes the oath/promise." This provision means that the term of office of members of the DPR is unlimited or uncertain. So that elected DPR members can become DPR members forever or for life. This certainly contradicts the principles of constitutionalism adopted by UUD NRI 1945. A country formed with a constitution certainly adheres to the principles of constitutionalism. Constitutionalism or these limitations usually take the form of the rights of groups or individuals to "fight" the government, for example to fight for the rights to freedom of expression, association and equality before the law, and what is no less important is a fair legal process. However, there are various other forms of constitutional limitations, for example limitations on terms of office, limitations on authority, restrictions related to civil rights as stated in the Charter or Chapter on Human Rights, and restrictions on exercising power, such as requirements for requirements that regulate the form and procedures of legislation. Constitutionalism regulates two relationships that are related to each other, namely: First, the relationship between government and citizens; and Second, the relationship between one government institution and another government institution.

A constitutional government is not a government that follows the sound of the articles of the constitution, but rather a government that is in accordance with the sound of the constitution which is true to the essence of constitutionalism.<sup>19</sup> In line with this, Bambang Widjojanto added 5 (five) characteristics and at the same time the essence of constitutionalism, including:<sup>20</sup>

First, public authority can only be legitimized according to constitutional provisions; Second, the implementation of popular sovereignty through representatives must be carried out using the principle of universal and equal suffrage and executive appointments must be through democratic elections; Third, separation or division of power and limitation of authority; Fourth, the existence of an independent judicial

<sup>16</sup> (Asshiddiqie 2018)

<sup>17</sup> (Black 2009)

<sup>18</sup> Saldi Isra, *Sistem Pemerintahan Indonesia (Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidensial)* (Depok: Rajawali Pers, 2019).

<sup>19</sup> Adnan Buyung Nasution, *Aspirasi Pemerintahan Konstitusional Di Indonesia : Studi Sosio-Legal Atas Konstituante 1956-1959* (Jakarta: Pustaka Utama Grafiti, 2009).

<sup>20</sup> A. Mukti Arsyad, *Amandemen UUD 1945: Antara Teks Dan Konteks Dalam Negara Yang Sedang Berubah* (Jakarta: Sinar Grafika, 2000).



power that can uphold law and justice both to the people and to the authorities; Fifth, there is a system of control over the military and police to enforce the law and respect people's rights.

Ideally, constructing a power or government built in terms of executive, legislative and judicial powers in a country is required to understand the basic ideas of constitutionalism. However, in practice, this will depend on political forces' desire and awareness. State administrators are also required to understand the ideas contained in the articles of the constitution in full and not partially so that with this understanding, the perspective, ways of solving problems and ways of acting of all elements of the nation now and in the future must refer to and be based on the guidelines of the constitution, because understanding constitutionalism will appear in state practice.<sup>21</sup> The basic basis of constitutionalism is general agreement or agreement (consensus) among the majority of the people regarding the ideal building of the state. State organizations are needed by the community so that their interests can be protected through the formation and use of mechanisms called the state.<sup>22</sup>

The principle of limiting power, commonly known as the principle of constitutionalism, is an integral component of democratic government. Without applying the concept of constitutionalism to itself, democratic government is impossible to realize. When compared to building a house, constitutionalism is used as the foundation for the constitution. Thus, the terms constitutionalism and constitution cannot be separated.<sup>23</sup> Therefore, a democratic country must implement constitutionalism in its nation's soul so that a democratic government can be realized. Because according to Miriam Budiarjo, the characteristic of a democratic country is a government that is limited in its power and does not act arbitrarily towards its citizens.<sup>24</sup> With the explanation above, it is necessary to apply the principles or concepts of constitutionalism to create an orderly state. The term of office of the DPR needs to be limited.

The idea of constitutionalism is the best way to limit government power with a constitution, whether it is written or unwritten. The constitution guarantees political rights and organizes the division of state power so that executive power is balanced by the power of parliament and legal institutions. Therefore, the idea of constitutionalism requires that all holders of power must be limited. On the one hand, no single party or institution can have unlimited power. On the other hand, every grant of power always needs to be accompanied by limitations on power. Thus, thinking that recognizes or desires the existence of institutions that have unlimited power is not in accordance with the idea of constitutionalism.<sup>25</sup>

### **3.2 Mitigating the Abuse of Power: A Strategic Framework for Constitutional Safeguards**

The rule of law is intended to prevent arbitrary actions by the authorities.<sup>26</sup> The rule of law is synonymous with providing restrictions on the power of the state or government. Limited government power is a characteristic of popular sovereignty. The people's sovereignty can be realized through general elections to choose their future leaders. The sovereignty given by the people to the ruler cannot be exercised arbitrarily to oppress the people. So that power needs to be limited. Law cannot be separated from power, and power cannot be separated from law.<sup>27</sup>

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<sup>21</sup> (Alfauzi and Effendi 2020)

<sup>22</sup> Syafriadi Syafriadi, "Hubungan Konstitusi Dan Negara Dalam Paham Konstitusionalisme," *UIR Law Review* 3, no. 2 (2019).

<sup>23</sup> M. Yasin al Arif, "Aktualisasi Paham Konstitusionalisme Dalam Konstitusi Pasca Amandemen UUD NRI 1945," *Pandecta Research Law Journal* 12, no. 2 (2017).

<sup>24</sup> Miriam Budiarjo, "Dasar-Dasar Ilmu Politik" (Jakarta: Gramedia Pustaka Utara, 1998), 35.

<sup>25</sup> (Riewanto and others 2023)

<sup>26</sup> Iriyanto A. Baso Ence, *Negara Hukum & Hak Uji Konstitusionalitas Mahkamah Konstitusi; Telaah Terhadap Kewenangan Mahkamah Konstitusi* (Bandung: Alumni, 2008).

<sup>27</sup> (Riqiey and others 2022)

Regulation and limitation of power is an essential characteristic of the principle of constitutionalism and is also the main task of the constitution, so that the possibility of arbitrary action by the authorities can be controlled and minimized. As Lord Acton wrote, power tends to corrupt and absolute power corrupts absolutely. This is the iron law of power which, if not controlled and limited according to constitutional procedures, can become a source of disaster. Moral power should not be left solely to the intentions, or personal characteristics of the person who happens to be holding it. No matter how good a person is, power must still be regulated and limited, so that the iron law of power does not swallow up people's goodness.

The absence of regulations regarding limitations on the term of office of DPR members can lead to arbitrary actions taken by DPR members. The arbitrariness resulting from mere ambition for power will certainly impact and harm the people or even other state institutions. If it is related to the consequences of the rule of law, then term limits are implemented to prevent arbitrary actions by DPR members. This will certainly be difficult to happen, because it is caused by political conditions which indicate that DPR members are reluctant to be limited as explained above. Apart from that, members of the DPR or the Constitutional Court distinguish that the DPR is a pluralistic institution with little potential to carry out arbitrary actions. Power must still be regulated and limited even if good people fill it.<sup>28</sup> If the term limits for DPR members are implemented with certainty and clarity, there is little possibility for DPR members to act arbitrarily. Because with limited time in power, they will think wholeheartedly about how to move this country further. there is no longer any thought about how to become a member of the DPR again for the next general election.

### 3.3 Safeguarding Legal Certainty

Legal certainty is the main characteristic of a rule of law.<sup>29</sup> The terms legal certainty in foreign language literature are *Rechtssicherheit* (German), *Securite juridique* (France), *Cartezza del Diritto* (Italy), *La seguridad juridical* (Spain), *Rattsakherheit* (Sweden), *Rechtzakerheid* (Netherlands), *Legal Certainty*, *Legal determinacy*, and *Legal security* (England). From this terminology, legal certainty consists of 2 (two) words: certainty and law. Thus, we can define legal certainty as the existence of certain and definitive laws. Legal certainty itself is the opposite of legal uncertainty. In the rule of law tradition, legal certainty is part of the formal aspect of the rule of law where the requirement is that laws should be validly made and publicly promulgated, of general application, stable, clear meaning, consistent and prospective.<sup>30</sup> With the above conditions, everyone can obtain protection from the arbitrary use of power in creating and implementing the law.

According to Sudikno Mertokusumo, legal certainty guarantees that the law is implemented properly.<sup>31</sup> In another expression, the essence of legal certainty is the existence of laws (legal norms) that legal subjects know regarding permitted and prohibited actions and their legal consequences. Legal certainty also requires accessibility and predictability of the law. The law must be formulated precisely and with other requirements to make this happen. Satjipto Rahardjo himself said that legal certainty is certainty about the law itself (*sicherheit des rechts selbst*).<sup>32</sup> Thus, if we want to realize the essence of the law itself, the law must be formulated clearly, precisely and unambiguously. If the law itself does not formulate this, the essence or purpose of the law will never be achieved.

<sup>28</sup> (Asshiddiqie 2018)

<sup>29</sup> Syofyan Hadi, *Pengantar Ilmu Hukum* (Surabaya: R.A.De.Rozarie, 2021).

<sup>30</sup> (Totskyi 2014)

<sup>31</sup> Sudikno Martokusumo, *Penemuan Hukum* (Yogyakarta: Liberty, 2009).

<sup>32</sup> Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban* (Jakarta: UKI Press, 2006).

Legal certainty is an integral part of the rule of law and the main foundation of the rule of law. Legal certainty is a sine qua non condition of a democratic society/state based on law. Legal certainty is one of the rights of every citizen which is classified as a non-derogable right. Therefore, legal certainty is the main requirement of the law itself. Legal certainty was born to oppose the uncertainty of the law itself (legal uncertainty/legal indeterminacy). The loss of legal certainty can lead to the emergence of tyranny and injustice.<sup>33</sup> There is a principle that states *ibi jus incertum, ibi jus nullum* where the right is uncertain, there is no right (where there is no legal certainty, there is no law).<sup>34</sup> Laws that do not provide certainty lose their meaning as law.

Legal certainty is essential in a legal state to create order, regularity, prosperity, and justice. This indicates that legal certainty is needed in all aspects of state life, both in the social, cultural and economic fields. It is not uncommon for legal uncertainty to be the main factor causing various social, cultural and economic problems to emerge. Therefore, legal certainty must be the main principle in the development of law, both in law making, law finding, and law applying. To realize legal certainty, which is the aim of the law, one way is to regulate the term limits for members of the DPR in written or positive form.

### 3.4 Advancing Democratic Practices: A Strategic Approach to Strengthening Democracy in Indonesia

Democracy will be bad if power continues to last and lacks term limits, because this is contrary to democratic rules which require periodic changes in power.<sup>35</sup> The DPR has a very important position as an institution that accommodates the aspirations of the people, therefore the term of office of DPR members must be limited. Apart from being important to limit, limiting the terms of office of DPR members is also in line with the spirit of the 1998 reforms which emphasize limitations on power. One is by placing clear restrictions on periodization and length of term of office. If no regulation limits the terms of office of members of the DPR, it will be contrary to the constitutional spirit.

Modern democracy is built on the principle of popular sovereignty, which means that the highest power in a country is in the hands of the people.<sup>36</sup> This power is transformed in state organizations through the theory of social agreements as the basis for the founding and administration of the state and also agree on the basic principles of state administration, the rights of citizens that must be protected, and the organization of state administration.<sup>37</sup> In modern democracy, the state's existence is assumed to be formed by the people and to fulfill the needs or interests of all the people. The collective agreement of all the people is manifested in the form of the basic document for founding a democratic state, namely the constitution. Bearing that the agreement made is made by all the people who are the holders of the highest power, the constitution becomes the highest law in the life of the nation and state (the supreme law of the land).<sup>38</sup>

All concepts of the constitution, especially in modern, plural countries, are always filled with noble values which are universal, parrenial and basic things which are mutually agreed upon by all components of the citizens concerned even though each has different religious,

<sup>33</sup> (Totskyi 2014)

<sup>34</sup> Jason Stone, "Ubi Jus Incertum, Ibi Jus Nullum: Where the Right Is Uncertain, There Is No Right: *United States v. Navajo Nation*," *Pub. Land & Resources L. Rev.* 27 (2006): 149.

<sup>35</sup> (Riqiey and others 2022)

<sup>36</sup> Baharuddin Riqiey, "Pemilihan Kepala Daerah Oleh Dewan Perwakilan Rakyat Daerah Pasca Putusan MK No. 85/PUU-XX/2022," *Constitution Journal* 2, no. 1 (2023), <https://doi.org/10.35719/constitution.v2i1.42>.

<sup>37</sup> Zulfan, "Pemikiran Politik Thomas Hobbes, John Locke Dan J.J. Rousseau Tentang Perjanjian Sosial," *Serambi Akademica* VI, no. 2 (2018).

<sup>38</sup> Muchamad Ali Syafa`at, *Konstitusi Dan Demokrasi* (Malang: Universitas Brawijaya, 2014).

belief or cultural backgrounds, as for in the constitution there is an understanding of constitutionalism. The understanding of constitutionalism has laid the basis for limiting power which has been formulated in the constitution of a democratic country. The fundamental values that underlie limitations on power are to prevent the domination of power by state administrators while aiming to protect human dignity. This limitation of power practically ends and aims at the welfare of society.

The term of office is always debated whenever a general election is held. It becomes a dilemma when the constitution provides equal opportunities for every citizen to sit in government, but in reality, most parliament members are filled with old faces.<sup>39</sup> This seems to violate the 5<sup>th</sup> principle of the Pancasila state which states "Social justice for all Indonesian people". Social justice here can also be linked to general elections, that every citizen has the right to choose legislative candidates who he thinks are appropriate who can serve in parliament through the general election system. General elections are held directly, generally, freely, honestly and fairly every five years.

Limitations of power in a democratic country of course cannot be separated from the existence of a constitution that underlies it. Abdul Mukhtie Fadjar further stated in his book *Constitutional Law and the Constitutional Court* that the most appropriate and solid basis for a democratic state is a constitutional state which is based on a solid constitution, a solid constitution is only a constitution that understands its constitution or constitutionalism, namely that which regulates in detail the limits of authority and power of the executive, legislative and judicial institutions in a balanced manner and mutual supervision (checks and balances), as well as providing fairly broad guarantees in terms of respect and protection, and to fulfill citizens' and human rights.<sup>40</sup>

In relation to the discussion regarding the constitution above, the Indonesian state itself uses the concept of democracy in the existing constitutional provisions. Democracy is part of the constitution. Democracy itself can be understood as the basis of a state, where in a democracy the power of the people greatly influences their lives or in assessing state policies. Because state policies must be able to accommodate all the interests of the people, because the essence of democracy is where the highest power rests with the people, so restrictions on power in state policies may start from the interests of the people, that is the true value of a good constitution. in a country that adheres to the concept of democracy.

Even though the rules regarding the term of office of DPR members currently rely on public trust, this does not mean that it is considered a democratic step. Public trust in prospective DPR members cannot be used indefinitely as a basis for ruling. Because for the author, there are still a lot of violations in the general election process, ranging from money political activities to other violations. This will affect the voter's voting rights so that he (the legislative candidate) will get the vote. When they got the vote, they said this was a mandate from the people. Of course, this is a mistake, because something obtained illegally according to the law cannot be legally justified. Then, if the public's trust is the basis for ruling forever, all state institutions, even the President, will feel jealous so that term limits will be useless and they will rely on the public's trust in how long they will serve.

Even though some countries do not explicitly regulate term limits for DPR members in their constitutions, it cannot be said that these countries are ideal and democratic. Because, this must also be explained, whether it is true that countries that do not limit the terms of office of members of the DPR adopt the principles of constitutionalism in their constitutions, and whether these countries do not limit the terms of office for only one of their most important state institutions. This must be answered, because it is irrelevant to say that some countries

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<sup>39</sup> (Fikri and others 2022)

<sup>40</sup> Johannes Suhardja, "Supremasi Konstitusi Adalah Tujuan Negara," *Dinamika Hukum* 10, no. 3 (2010).

still do not limit the terms of office of DPR members, then this is used as a reference for not limiting the terms of office of DPR members in Indonesia.

Concerning the democratic system in Indonesia, Indonesia adheres to what is called constitutional democracy. Constitutional democracy is closely related to the principle of constitutionalism. Constitutional democracy requires the implementation of powers based on the constitution and the principle of constitutionalism, which requires the existence of powers regulated in the constitution. One of the distinctive characteristics of constitutional democracy is that a democratic government is a government whose power is limited and is not allowed to act arbitrarily against citizens. Limitations on government power are contained in the constitution; therefore it is often called a government based on the constitution.

### **3.5 Safeguarding Against Authoritarianism: Exploring Strategies for Sustaining Democratic Values**

Authoritarianism is a government run using an iron fist, by one or a few people in power, intending to perpetuate their power and take as much profit as possible.<sup>41</sup> Seeing the absence of regulations regarding term limits for members of the DPR, this will have the potential to erode our democracy and lead to authoritarianism. This is explained by Cheryl Saunders who said that dominant and unlimited power could potentially erode the democratic system and lead to authoritarianism.<sup>42</sup> The danger of authoritarianism cannot be prevented if a country does not fully implement the principles of constitutionalism.

### **3.6 Facilitating Regeneration: Strategies for Effective Implementation and Sustainable Progress**

Limiting the term of office of DPR members will have a positive meaning because there is a regeneration process. By limiting the term of office, there will be a kind of greater equality of opportunity for people to become council members. Even though anyone can nominate to become a member of the DPR, efforts to limit the terms of office of DPR members will create a regeneration of the birth of new, more optimal leaders. The unlimited term of office of members of the House of can result in leadership regeneration not occurring in members of the DPR so that they do not develop significantly and are even static and not dynamic. Limiting the term of office of members of the DPR can also prevent abuse of authority because power is long held by one person, even though in this case the legislative body makes collective, collegial decisions because the majority faction can abuse its authority, therefore it still needs to be limited.

By limiting the term of office of members of the DPR, part of the effort to realize every citizen's constitutional rights to be elected. Furthermore, the benefits that will be obtained are new energy, fresh thoughts and a spirit of idealism to take the Indonesian nation in a more progressive and innovative direction. With this, the regeneration cycle will run well. Political party members or administrators will always be ready to replace their senior positions, especially for those who already can replace them. From there you will also find new seeds of potential leaders with new enthusiasm.

The poor leadership regeneration within political parties that can only rely on their seniors does not allow juniors within the party to nominate themselves as council members. Usually this happens to parties that have been around for a long time and have great potential to win in general election contestations. Now is the time for young people who have never served as council members to replace seniors who have been council members for two or more terms. Limiting the term of office of DPR members is beneficial not only for young people or

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<sup>41</sup> Bivitri Susanti, "Bahaya Otoritarianisme Terselubung," Kompas, 2022.

<sup>42</sup> Cheryl Saunders, "Otoritarianisme Dan Masa Jabatan Presiden: Perspektif Global Dan Nasional," STH Indonesia Jentera, 2022.

the millennial generation but also for political party cadres who have served in political parties for a long time. So that he will be allowed to occupy public office, namely the DPR.

Ideally, whether public positions are elected through general elections or not, there must still be term limits. This is important for regenerating personnel who occupy a quo position. That, with no restrictions on being members of the legislature, party officials who have been members of the legislature for several periods will continue to nominate themselves in general elections. This will, of course, result in inadequate regeneration in the bodies of legislative members, and narrow the chances of political party members being elected as legislative members. Creating this regeneration does not mean getting rid of people who have high quality and integrity, but this principle must be obeyed and implemented, namely that power must be limited. This regeneration will also create new people who will be people of high quality and integrity.

#### 4. Conclusions

Based on the results of research and analysis carried out through studies described in the previous chapters, this research comes to the following conclusions. UUD NRI 1945 adheres to the principle of constitutionalism. Constitutionalism is the understanding or idea that government power needs to be regulated and limited so that the exercise of state power remains orderly. The DPR as one of the state institutions strictly regulated in UUD NRI 1945 is not balanced with regulations regarding limitations on the term of office of DPR members. Meanwhile, other state institutions mentioned in UUD NRI 1945 are regulated and limited. This causes no regulations regarding limiting the term of office of DPR members and is not in accordance with the principles of constitutionalism adopted by UUD NRI 1945. The absence of regulations regarding limiting the term of office of DPR members needs or urges to be limited, this aims to (1) upholding the principles of constitutionalism, (2) preventing arbitrary actions, (3) realizing legal certainty, (4) implementing healthy democracy in Indonesia, (5) preventing authoritarianism, and (6) carrying out regeneration.

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