

RETHINKING LEGISLATIVE TERM LIMITS: SAFEGUARDING DEMOCRATIC RENEWAL IN CONSTITUTIONAL STATE OF INDONESIA

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Abstract

Indonesia's constitutional framework enshrines the separation of powers among the executive, legislative, and judicial branches, yet only the legislature lacks explicit term-limit provisions for its members. This normative legal analysis examines the democratic and legal implications arising from this regulatory gap and proposes strategies to safeguard legislative renewal. Utilizing primarily on secondary sources—statutes, academic literature, and comparative analyses—the research employed both statutory and conceptual approaches to assess existing laws, notably Law No. 17 of 2014 on the People's Consultative Assembly and House of Representatives and Law No. 7 of 2017 on General Elections. The analysis identifies three core deficiencies: first, the lack of term limits undermines legal certainty by leaving tenure duration indeterminate and susceptible to arbitrary interpretation; second, unlimited re-election fosters power entrenchment, increasing risks of corruption, collusion, and nepotism, and weakening the legislature's oversight and budgetary functions; third, perpetual incumbency impedes generational renewal, diminishing internal party democracy and restricting political recruitment. Drawing comparative insights from Australia's staggered Senate terms illustrate how structured tenure can promote dynamism while retaining institutional memory. In response, the study advocates for a clear legislative amendment that caps legislators' service to two consecutive terms, aligned with principles of accountability, rotation of power, and open political recruitment. Additionally, it recommends that political parties institutionalize transparent internal mechanisms and enforce term-limit rules to ensure cadre development and democratic governance. By codifying legislative term limits and fostering proactive party roles, Indonesia can strengthen constitutional checks and balances, enhance the legislative quality, and secure sustainable democratic renewal.

Keywords: *Legislative Term Limits; Constitutional State; Separation of Powers; Democratic Renewal; Political Accountability.*

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1. Introduction

Popular sovereignty plays a central role in the democratic ideology of a country.¹ A democracy, in its essence, is a political system built on the pillars of popular sovereignty and majority rule.² Its strength is measured not only by the extent to which citizens' aspirations are

¹ Larry M Bartels et al., "The Forum: Global Challenges to Democracy? Perspectives on Democratic Backsliding," *International Studies Review* 25, no. 2 (April 3, 2023), <https://doi.org/10.1093/isr/viad019>.

² Vasileios Adamidis, "Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness," *Politics* 44, no. 3 (August 1, 2024): 386–99,

articulated and realized through governmental action, y but also by the public's ability to conduct evaluations and hold their representative accountable. Nonetheless, its concept implementation continues to face challenges, where the main issue lies in the definition—the essence of democracy. There is no universally accepted definition that is agreed upon by countries worldwide. Furthermore, there are no globally established indicators of democracy, as each democracy study tends to have its own criteria.³

Acknowledging different interpretations of the concept of democracy in democratic energy,⁴ a prevailing minimalist understanding of democracy often centers on the electoral process.⁵ However, this perspective is not necessarily incorrect between general elections and representation of the populace within both executive and legislative branches.⁶ Delving deeper, elections are also connected to establishment of term limits. The People's Representative Council serves as one such representative institution that holds legislative power, directly elected by the people through elections. This power is significant and substantial, as it is within this institution that laws with significant societal ramifications are formulated. From a more critical standpoint, the legitimacy of a democratic system can be assessed by its high score on the rule of law index. This is beneficial, provided it undergoes the proper processes of accountability and legal formalism.⁷ Therefore, democracy and legislative members are closely interconnected, positioning the authority of the legislative institution as a direct correlate of a democratic legal system.

Theoretically, Indonesia is governed by the rule of law, which implements a division of powers. This horizontal division in Indonesia emphasizes the distinction between the functions of state institutions: first, legislative power, concerned with the formulation of legal norms (rule-making function); second, executive power, tasked with the implementation of laws (rule application function); and third, judicial power, responsible for the authority to adjudicate legal violations (rule adjudication function).⁸ In division powers, coordination and cooperation among institutions are essential in exercising their powers. This division is different from state power which is divided into several parts of organs and functions. Notably, these three powers, in their respective capacities and functions, operate on an equal footing, without higher institution.

Power is generally defined as the ability of an individual or group to influence others' behavior in accordance with their objectives. To prevent the abuse of such power, legal frameworks are important – particularly through mechanisms such term limits, which serves as a legal subject on authority, ensuring accountability and preventing power entrenchment. In Indonesia, term limits are clearly regulated for both executive and judicial branches. The 1945 Constitution stipulates that the President and Vice President serve for a term of five years and may be re-elected for one additional term to a maximum of ten years. In the judiciary, the Constitutional Court Law mandates that the Chief Justice and Deputy Chief Justice shall be elected from among the justices for five-year term and may be re-elected from among the justices for a five-year term and may be re-elected once. In addition, constitutional justice serves five-year terms and may be reappointed for one additional term. However, such limitations are notably

https://doi.org/10.1177/02633957211041444/ASSET/6EE2472D-901D-49F3-AEA4-CAED1B8777C0/ASSETS/IMAGES/10.1177_02633957211041444-IMG2.PNG.

³ Gerardo L. Munck and Jay Verkuilen, "Conceptualizing and Measuring Democracy," *Comparative Political Studies* 35, no. 1 (2002): 5–34, <https://doi.org/10.1177/001041400203500101>.

⁴ Kacper Szulecki and Indra Overland, "Energy Democracy as a Process, an Outcome and a Goal: A Conceptual Review," *Energy Research & Social Science* 69 (November 1, 2020): 101768, <https://doi.org/10.1016/J.ERSS.2020.101768>.

⁵ Szulecki and Overland.

⁶ Klaus Gründler and Tommy Krieger, "Democracy and Growth: Evidence from a Machine Learning Indicator," *European Journal of Political Economy* 45 (December 1, 2016): 85–107, <https://doi.org/10.1016/J.EJPOLECO.2016.05.005>.

⁷ Jürgen Habermas, "On the Internal Relation between the Rule of Law and Democracy," *European Journal of Philosophy* 3, no. 1 (April 1, 1995): 12–20, <https://doi.org/10.1111/J.1468-0378.1995.TB00036.X>.

⁸ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2024).

absent in the legislative branch, highlighting a gap in legal safeguards that may enable indefinite tenure without accountability.

The Supreme Court stipulates that the Chief Justice, Vice Chief Justice, and Supreme Court Justices serve five years terms. Similarly, the Judicial Commission Law mandates five-years terms for Commission members, with the possibility of one reappointment. These term limits reflect the principle of power limitation within the judicial branch.

In the legislative branch (covering the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional People's Representative Council) states that legislative members serve five-year terms, it lacks a clear limitation on the number of terms, allowing indefinite re-election. However, the law gap creates an imbalance among the three branches of government. While the term limits in the executive and judicial branches ensure accountability and democratic renewal, the separation of powers requires a system of checks and balances.⁹ In this context, it can entrench power, echoing historical issues with institutional balance prior to the enforcement of executive term limits.

Beyond the democracy and epistocracy debate, as argued by Matthew C. Lucky et al., the current regime shapes not only the use, but also the production of knowledge that inform policy decisions. A competent government must ensure objective, evidence-based lawmaking – a principle jeopardized when legislative tenure is unlimited.¹⁰ Without terms limits, a member of the House of Representatives could potentially remain in office indefinitely. This situation mirrors similar problems that have occurred in the past issue concerning with the presidency, where the absence of term limits led to excessive concentration of power that was difficult to monitor. Although the position of members of the House of Representatives is not entirely comparable to the presidency, this issue remains relevant and important to be further examined in the context of strengthening democratic principles and limiting power.

This study contributes a unique perspective by examining legislative term limits through the lens of democratic theory and separation of powers. While previous research by M. Sokhikhul Akbat and Jamil, focuses on the regulatory framework surrounding term limits, this study offers a comparative analysis by exploring both the impacts of the absence of such limits and potential strategies for their implementation. Similarly, Andika Wijaya et al. assess political or legal reform impacts, which emphasizes how the lack of legislative term limits directly affect democratic governance and the quality of lawmaking.¹¹ Another study by I Gede Druvananda Abhiseka focuses on the proposal to amend the law regarding the term limits for members of the House of Representatives, suggesting a limitation of only two terms.¹² This study, on the other hand, explores how the concept of the separation of powers and democracy relates to the term limits for members of the House of Representatives, as this directly influences the quality of legislative drafting. Therefore, this research is crucial for understanding how the absence of term limits for members of the Indonesian legislature affect democratic processes, as evidenced by the quality and direction of legislative products.

2. Method

This study employed normative legal research, relying on secondary data from literature sources, including books, statutes, and other documents relevant to the research. It used both statutory and conceptual approaches. The statutory approach examined legislative term limits as regulated in Law Number 17 of 2014 on the People's Consultative Assembly, the People's

⁹ Randall G. Holcombe, "Checks and Balances: Enforcing Constitutional Constraints," *Economies* 6, no. 4 (October 24, 2018): 57, <https://doi.org/10.3390/economies6040057>.

¹⁰ Matthew C. Lucky, "Knowledge-Making in Politics: Expertise in Democracy and Epistocracy," *Political Theory* 52, no. 3 (June 1, 2024): 431–58, <https://doi.org/10.1177/00905917231199495>.

¹¹ Andika Wijaya et al., "Juridical Construction of Legislative Term Limits in Indonesia," *Journal of Constitutional and Governance Studies*, January 30, 2025, 152–71, <https://doi.org/10.20885/JCGS.vol1.iss2.art3>.

¹² I Gede Druvananda Abhiseka, "Analisis Yuridis Pengaturan Pembatasan Periodisasi Dewan Perwakilan Rakyat Republik Indonesia Dalam Menjamin Law-Abiding Society," *VYAVAHARA DUTA* 20, no. 1 (April 30, 2025): 1–10, <https://doi.org/10.25078/vyavaharaduta.v20i1.4569>.

Representative Council, and the Regional Representative Council, and Law Number 7 of 2017 on General Elections in Indonesia. These laws address the structure, duties, responsibilities, and electoral procedures for legislative bodies, including limitations on the term of office for their members.

The conceptual approach explored legal concepts, particularly those related to democracy. The research specification is descriptive-analytic, aiming to describe the relationship between legislative power and democracy. Data were collected through literature review, encompassing primary, secondary, and tertiary legal materials, and analyzed using juridical methods to interpret national legal norms relevant to the research topic.

3. Results and Discussion

3.1. The Impact of the Term Limits Absence for Legislative Members in Indonesia

The discussion of democracy must be contextualized within the relevant political and social frameworks. Revolutionaries of the eighteenth century, anti-colonial movements from the nineteenth and twentieth centuries, liberal democrats, and socialist practitioners have, at different points in time, supported varying levels of democratic or authoritarian governance depending on the specific conditions they faced. Although certain theorists promote democracy as a universal and unconditional principle, historical evidence indicates that this absolutist stance frequently becomes unsustainable. In practice, this results in four unsatisfactory outcomes: (1) espousing democratic ideals while detaching them from actual circumstances; (2) altering the definition of democracy to permit authoritarian practices; (3) using ambiguous legal principles to rationalize temporary measures and subsequently retracting them when crises subside; and (4) delineating specific conditions under which democratic liberties may be curtailed for finite durations to achieve supposedly higher political objectives. To advocate for “democracy” at every opportunity lacks historical depth, and it is a distortion of democratic principles to extend or formalize emergency powers beyond their intended scope while asserting that they represent enhanced governance. The unexamined praise of electoral processes and the swift condemnation of any regime that does not meet expectations represent a prevailing viewpoint among some intellectuals—one that obscures the underlying class constraints and historical dynamics influencing the interplay between democracy, authoritarianism, and socialism.¹³

In evaluating the effectiveness of democratic governments, it is essential to focus on the function of political parties.¹⁴ Samuel Issacharoff¹⁵ notes that the vitality of parties is crucial for sustaining a system of political competition, which ultimately acts as the foundation for holding governors accountable to the governed. The design of a constitution is contingent upon both the formal delineation of powers and the allocation of political authority among rival parties. The growing body of literature on democratic backsliding emphasizes this issue by illustrating the disintegration of traditional parties, the failure of party systems, and the emergence of populist and extremist movements. Mark Tushnet¹⁶ contends that the traditional doctrine of separation of powers is insufficient to ensure political democracy in a context where political parties are pivotal. Therefore, focusing on “fourth-branch” institutions, specifically political parties, is essential.¹⁷

A significant issue is political fragmentation, characterized by the dispersion of authority among various centers of power within and beyond political parties, as articulated by Richard

¹³ James Petras, “Authoritarianism, Democracy and the Transition to Socialism,” *Socialism and Democracy* 1, no. 1 (January 1, 1985): 5–27, <https://doi.org/10.1080/08854308708427940>.

¹⁴ Madhav Khosla and Milan Vaishnav, “Democracy and Defections,” *International Journal of Constitutional Law* 22, no. 2 (April 1, 2024): 400–430, <https://doi.org/10.1093/icon/moae037>.

¹⁵ Samuel Issacharoff, “Private Parties with Public Purposes: Political Parties, Associational Freedoms, and Partisan Competition,” *Columbia Law Review* 101, no. 2 (2001): 274–313, <https://doi.org/10.2307/1123800>.

¹⁶ Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (Cambridge University Press, 2021).

¹⁷ Khosla and Vaishnav, “Democracy and Defections.”

Pildes.¹⁸ External fragmentation occurs when power shifts from dominant parties to peripheral actors, whereas internal fragmentation emerges when party leadership cannot maintain control over individual legislators. Pildes observes that the current structure of our parties lacks the parliamentary characteristics necessary for effective leadership, resulting in party leaders being unable to exercise the level of influence typical in parliamentary systems. The weakening of party cohesion significantly undermines legislative effectiveness, impacting everything from budget approvals to policy enactment while diminishing public trust.

In order to address fragmentation and maintain the integrity of electoral mandates, numerous democracies have implemented anti-defection provisions. In various parliamentary systems, regulations prevent legislators from changing parties during their term. These rules also establish penalties, such as forfeiting their seat, for those who engage in floor-crossing. A comparative analysis of South Pacific democracies reveals that anti-defection laws maintain the relative standings of parties during election night throughout the parliamentary term, thus contributing to governmental stability. Evaluated through two criteria—the interpretation of “defection” and the intensity of its penalty—these regulations seek to preserve the connection between voter preferences and legislative actions. In parliamentary systems, the executive's reliance on legislative confidence means that defections can lead to government collapse. Therefore, binding legislators to their party platforms enhances accountability and deters opportunistic behavior.¹⁹

The legislative body serves as a representative body that connects the people's aspirations and aims to protect public interests.²⁰ It holds three key functions, foremost among them the legislative function – formulating and enacting laws that reflect the will of the people while ensuring legal certainty, social order, and the protection of rights. High-quality laws form the foundation for the creation of social order, legal certainty, and the protection of the rights and obligations of citizens. Thus, legislators must possess intellectual competence, moral integrity, and a capacity to represent diverse interests.

Allan critiques absolute parliamentary sovereignty, advocating for a constitutional framework that limits both legislative and executive actions through fundamental rights and substantive rule of law. His critique also targets the positivist school, which separates law from morality, emphasizing that substantive rule of law should take precedence over procedural law.²¹ Unlike the executive and judiciary, the legislature lacks clear term limits, raising concerns over prolonged political dominance. This issue is further complicated by the concept of a super-legislature, wherein a legislative entity holds extraordinary powers that surpass the authority of a regular legislature.²² Although this term is not frequently used in constitutional discourse, it appears in critical or metaphorical studies to signify the dominance of the legislative institution within the governmental system.

Second, the budgetary function is a core responsibility of the legislature, enabling it to shape national fiscal policy and development priorities. Drafting and approving the state budget goes beyond simply allocating funds; it also embodies development priorities, a commitment to the public good, and the efficient and effective use of public resources. Legislative participation in budgeting reinforces accountability and balances power between the legislative and executive branches. Effective and transparent budgetary oversight is thus essential for responsive and inclusive governance.

¹⁸ Richard H. Pildes, “Democracies In The Age Of Fragmentation,” *California Law Review* 110 (2022): 2051–68, <https://doi.org/10.15779/Z380V89J34>; Richard H. Pildes, “The Age of Political Fragmentation,” *Journal of Democracy* 32, no. 4 (2021): 146–59.

¹⁹ Khosla and Vaishnav, “Democracy and Defections.”

²⁰ Menakar Fungsi, Lembaga Legislatif, and Di Indonesia Iskatinah, “Menakar Fungsi Lembaga Legislatif Di Indonesia,” *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 22, no. 2 (September 10, 2020): 101–10, <https://doi.org/10.51921/CHK.QNQV5M66>.

²¹ Colin Munro, “Law, Liberty and Justice: The Legal Foundations of British Constitutionalism,” *Legal Studies* 14, no. 3 (November 2, 1994): 456–58, <https://doi.org/10.1017/S0261387500009879>.

²² Adamidis, “Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness.”

Third, the oversight function serves as a crucial checks and balances mechanism within a democratic government, ensuring the actions and policies of the executive branch. This role is designed to ensure that the government's power stays within established limits, aligns with the law, and reflects the wishes of the populace. By exercising effective oversight, it upholds government accountability, deters potential misuse of power and corruption, as well as guarantees that enacted policies genuinely serve the public interest. The legislative body has various tools at its disposal to perform this oversight function. One of these tools is the interpellation rights, allowing members to seek information from the government about significant and strategic policies that have a major impact on society. Additionally, there is the right of inquiry, which empowers the legislative body to investigate suspected breaches of law or government policy. The right to express an opinion is another important oversight mechanism, enabling the legislative body to articulate its perspectives or evaluations of government actions, potentially leading to a motion of no confidence if serious violations are identified.

Therefore, the oversight role performed by the legislative body is essential for upholding the equilibrium of power and accountability in the governmental system. Strong supervision not only deters possible misconduct, but also fosters a government that operates with greater transparency, efficiency, and responsiveness to the desires and needs of its citizens. The effective execution of this oversight function will aid in establishing a clean and authoritative government that can achieve the well-being of the public.

Through these three functions, the legislature embodies public representation and must ensure that all societal interests are reflected in policy-making. The constitution mandates a balance among state institutions; none should dominate. A system of checks and balances, including limitations on power such as term limits, is essential to maintaining institutional equality and preventing authoritarianism.²³

The limitation of power aims to prevent the domination of power by state officials and to protect human dignity for the welfare of the people. One key mechanism is restricting the tenure of state institution officials. The term limits are a fundamental aspect of governance in many countries, including Indonesia as a democratic state. of office is one concrete form of the state system in many countries, especially in Indonesia as a democratic country. The respective laws of each state institution have regulated the terms of office of state institution officials in Indonesia. However, public opinion on the legislator's performance is poor, and inadequate or unclear laws have harmed both the people and state. Such legal deficiencies undermine efforts to build a more democratic, justified, and prosperous society.²⁴

The unclear limits can lead to several impacts, including: First, lack of legal certainty. As a rule-of-law state, Indonesia aims to create legal certainty – ensuring laws are clear, predictable, and stable. Legal certainty refers to the certainty and consistency of the law which is important for individuals and organizations to have confidence in legal processes and decisions.²⁵ Joseph Raz argues that legal certainty requires laws to be prospective, understandable, and relatively stable.²⁶ Without clear regulations on legislative term limits, the principle of legal certainty cannot be fulfilled.²⁷ The absence of clear regulations regarding the term limits of legislative members can be defended on constitutional grounds, particularly the protection of voting rights and democratic principles. However, the argument concerning the excessive concentration of power also provides a legitimate basis for imposing term limits.

²³ Agung Sahib, "The Implementation of Trias Politica Concept in The System of Government in Indonesian Constitution Post Amendment," *Alauddin Law Development Journal* 6, no. 1 (March 25, 2024): 1–8, <https://doi.org/10.24252/aldev.v6i1.41362>.

²⁴ Abdul Bari Azed, "Observing the Indonesian House of Representatives's Performance," *Indonesia Law Review* 4, no. 2 (October 1, 2014): 145, <https://doi.org/10.15742/ilrev.v4n2.108>.

²⁵ John Bradford Braithwaite, "Rules and Principles: A Theory of Legal Certainty," *SSRN Electronic Journal*, 2002, <https://doi.org/10.2139/ssrn.329400>.

²⁶ Joseph Raz, "The Rule of Law and the Separation of Powers," in *The Rule of Law and Its Virtue**, ed. Richard Bellamy (Routledge, 2017), <https://doi.org/10.4324/9781315085302>.

²⁷ Humberto Ávila, *Certainty in Law*, vol. 114, Law and Philosophy Library (Cham: Springer International Publishing, 2016), <https://doi.org/10.1007/978-3-319-33407-3>.

Although indefinite terms are not explicitly prohibited by the Constitution and may be justified by the protection of voting rights, the lack of term limits also raises valid concerns about excessive power concentration. Without the regulation of the term of office, the principle of legal certainty cannot be applied. Current constitutional and legislative framework do not clearly regulate legislative tenure. Legal certainty requires a process of determination, legitimization, argumentation, and justification that ensures the semantic-argumentative control of state actions.²⁸ While this omission may not be unconstitutional, introducing limits without constitutional authority could violate legal principles – similar to the challenges of imposing a presidential term limit without constitutional amendment.

Second, risk of power abuse, abuse of power is an action carried out by a public official or ruler with a specific interest agenda, either for individual interests or for the interests of a group or corporation.²⁹ If power is uncontrolled, it will become arbitrary, that will certainly end in deviations, especially in terms of the formation of laws, where the legislative body is authorized to make laws. One of the risks is the potential for corruption if the action harms state finances, such as the use of state resources for personal or group interest and an overly use of state facilities. Without term limits, the risk of entrenched interests and systemic abuse increases, potentially state finances and weakening democratic integrity.

Third, lack of power regeneration. The absence of clear term limits for legislative members hinders political regeneration. Without restrictions the previous members can remain in office for decades, limiting opportunities for new candidates and stalling institutional renewal.³⁰ The state's system of government will not develop without the regeneration and it can undermine the constitutional rights of every citizen because there are no opportunities for new legislative candidates. This happens because they have no experience in the political world, so they do not build healthy competition among party cadres. In addition, it allows entrenched politicians to dominate the system, reducing diversity and innovation in legislative processes.

The political dynasties can lead to Corruption, Collusion, and Nepotism. Corruption involves the misuse of public office or corporate gain, often harm in state finances and the public interest and also becomes repressive actions taken do not cause a deterrent effect for the perpetrators.³¹ Corruption brings fatal impacts and is a serious problem for the welfare of society, and a shared responsibility of all elements of the nation without exception.³² Meanwhile, collusion refers to secret agreement between parties for unlawful or unethical purposes. Nepotism, on the other hand, is the practice of favoring relatives or friends for positions of power or advantage, regardless of their qualifications.

If such practices persist, they could lead to the perception that democracy is reserved solely for elite political groups eager for power, thereby obstructing the consistent functioning of constitutional democracy as mandated by the 1945 Constitution. This contradicts the constitutional principles of popular sovereignty and democratic equality as enshrined in the 1945 Constitution. In contrast, Australia's parliamentary system operates differently, with a three-year term for the House of Representatives and a six-year staggered term for the Senate. While it lacks formal term limits, competitive elections and internal party mechanisms help ensure leadership turnover. However, even in such systems, prolonged tenures risk concentrating power and innovation.

²⁸ J Linarelli, "Legal Certainty: A Common Law View and a Critique," in *The Shifting Meaning of Legal Certainty in Comparative and Transnational Law*, ed. M. Siems M. Fenwick and S. Wrba (Hart Publishing, 2017), <https://doi.org/10.5040/9781509911288.ch-007>.

²⁹ Asmuni Asmuni, "The Abuse of Power Philosophy in Government Administration," *Media of Law and Sharia* 5, no. 2 (April 5, 2024): 119–25, <https://doi.org/10.18196/MLS.V5I2.95>.

³⁰ Asmuni.

³¹ Rodes Ober Adi Guna Pardosi and Yuliana Primawardani, "The Legitimacy Death Penalty Application of Certain Conditions in the Anti-Corruption Law," *Jurnal Konstitusi* 19, no. 3 (August 30, 2022): 673–92, <https://doi.org/10.31078/jk1938>.

³² Ridwan Arifin, Siti Faridah, and Mohammad Naefi, "Misdemeanor of Corruption within the Scope of International Law and the Legal Consequences," *Journal of Indonesian Legal Studies* 4, no. 2 (November 3, 2019): 299–314, <https://doi.org/10.15294/jils.v4i2.29687>.

3.2. Realizing a Democratic Law by Limiting the Term of Office of Legislative Members

The rule of law is frequently perceived as a framework that imposes limitations on governmental authority—a mechanism that holds leaders, regardless of their political system, accountable to established legal boundaries. This traditional perspective positions legislatures as the defenders of democratic principles, while courts are depicted as the esteemed protectors of these established limits. This clear division masks the significant interconnection between democracy and the rule of law; each relies on the other for its development and success.³³

Democracy fundamentally requires the active involvement of actual citizens rather than mere concepts of a theoretical “general will.” This participation must occur through established mechanisms that effectively convert public opinions into legally binding decisions, utilizing direct referenda, representative assemblies, or deliberative forums. This emphasis on practical inclusion challenges the authoritarian assertion of representing a disabled populace and critiques the contempt for procedural mechanisms evident among certain “substantive” theorists.³⁴

Large assemblies, especially the legislature, must guarantee that the rule of law operates as a collective, self-sustaining framework instead of just serving as a judicial safeguard. Executives inherently draw more rigorous judicial examination as they embody more focused political alliances and regularly exercise coercive powers. Legislatures, in contrast, encompass a broader range of perspectives, oversee the development of policies, and ensure accountability of the executive—functions that cannot be effectively executed if legislators operate above the law. Maintaining legal boundaries solely during election seasons is insufficient; genuine democracy thrives only when its parameters are consistently upheld.³⁵

This principle is strongly supported by global norms: the United Nations asserts that “human rights, the rule of law, and democracy” are universal, indivisible values and places the rule of law at the core of Sustainable Development Goal 16, which seeks to establish peaceful, just, and inclusive societies. Even the most meticulously crafted laws are vulnerable if citizens and their elected officials do not fully understand and uphold them. Democratic stability relies on a self-reinforcing equilibrium, where institutions address conflicts based on established rules rather than the arbitrary decisions of influential individuals. The adherence of courts and legislatures to the supremacy of law establishes a beneficial cycle that empowers the general populace and limits unchecked ambition. On the other hand, should voters consistently choose leaders who disregard legal standards, or if security forces act without judicial supervision, the rule of law—and consequently, authentic democracy—may disintegrate rapidly.³⁶

A democratic government is defined by the sovereignty of the people, where citizens are central to the state’s structure. As a democracy, Indonesia should uphold the core principles of democracy, including accountability, ration of power, open political recruitment, and general elections. Accountability requires government officials to justify their actions and policies to the public and representative institutions. This encompasses legal, political, and ethical dimensions, which play important roles in holding the government accountable. An accountable government demonstrates openness to supervision, accepts criticism, and is prepared to confront the consequences of its failures or any irregularities.³⁷

Moreover, rotation of power refers to the orderly and peaceful transfer of authority, primarily through fair and regular elections. This ensures that diverse political entities or individuals have a fair chance to gain control. This cyclical transfer of power is crucial in preventing the long-term dominance of a single group or person, which could foster authoritarian tendencies. Legal provision on terms limits and transitions are essential to ensure democratic continuity and guard

³³ Jeremy Webber, “A Democracy-Friendly Theory of the Rule of Law,” *Hague Journal on the Rule of Law* 16, no. 2 (August 1, 2024): 339–74, <https://doi.org/10.1007/s40803-024-00240-5>.

³⁴ Webber.

³⁵ Claire Gardner, “Democracy and the Rule of Law,” William & Mary Law School, 2021, <https://law.wm.edu/academics/intellectuallife/researchcenters/postconflictjustice/internships/internship-blogs/2021/claire-gardner/democracy-and-the-rule-of-law.php>.

³⁶ Gardner.

³⁷ Herniwati, “Perkembangan Politik Hukum Di Indonesia,” in *Politik Hukum*, ed. Safrinal (Pasaman Barat: Azka Pustaka, 2021), 87.

against authoritarianism. Open political recruitment ensures equal political participation, allowing all qualified citizens to seek office regardless of background. This process must be merit-based and inclusive, with political parties playing a key role through internal democratic practices that foster capable leadership.

Moreover, general elections are a central mechanism in democracy that allows citizens to directly or indirectly elect their representatives in legislative bodies and/or heads of state/region. These must meet the principles of being free (voters can exercise their rights without coercion), fair (each vote has equal value and the process is transparent), periodic (held at established time intervals), and universal (all adult citizens have the right to vote). Quality general elections produce legitimacy for the government and ensure that the power exercised originates from the will of the people.³⁸

Last, fulfillment of basic rights. A core obligation of democratic government aims to guarantee and protect the basic rights of all citizens. These include civil and political rights (such as freedom of expression, assembly, association, religion, and the right to due process) as well as economic, social, and cultural rights (such as the right to education, health, decent work, and an adequate standard of living). The protection of these rights enables citizens to participate fully in national life and ensures protection from oppression and discrimination. Effective legal and institutional mechanisms are essential for upholding these rights.

Regarding legislative term limits and legal clarity, the indicators mentioned need to be considered, especially for the legislative members. The ideal term limit for legislative members varies depending on the political context and the needs of a particular society. However, many experts and political observers recommend a limit of two to three terms. This limit is based on the consideration that if legislative members continuously hold office, it will harm democracy which is highly valued in Indonesia. Therefore, clearer regulation of legislative term limits is necessary.

A law is effective only when it is systematically formulated, consistent, understandable, and enforceable³⁹ As Helen Xanthaki argues, the goal of legislative drafting is efficacy, meaning that the law must effectively achieve its intended purpose within society. Clarity, while important, must support legal effectiveness by promoting precision and reducing ambiguity. Thus, clarity must serve a purpose—it should enhance understanding without compromising precision and accuracy in the law's formulation.^{40,41} This study found that the terms of office limit of legislative members are not clearly regulated in the applicable laws. The relevant laws only state that there is no prohibition on the candidacy of legislative members elected twice to run again in the next general election as long as they have met the requirements. This will certainly have several impacts and weaken democracy, especially on the indicator of accountability.

In a democratic system, every public officeholder elected by the people must be held accountable for the policies they propose to implement. Although the current legal framework defines a five-year term ending with the swearing-in of successor, it lacks explicit language on term limitations. By supplementing this article with additional language that explicitly defines these term limits, legal certainty for the public would be enhanced, thereby ensuring that the principles of lawmaking are fulfilled. Specifically, this would uphold the principle of "clarity of formulation" as outlined in the Law on the Formation of Legislation. This principle requires structured, clear, and accessible legal drafting to avoid misinterpretation and ensure consistent application. Clarifying

³⁸ Ketut Sukewati Lanang Putra Perbawa, Willy Naresta Hanum, and Almaz Karimovich Atabekov, "Industrialization of Election Infringement in Simultaneous Elections: Lessons from Sweden," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (June 27, 2024): 477–509, <https://doi.org/10.53955/jhcls.v4i2.170>.

³⁹ Martitah Martitah et al., "Transformation of the Legislative System in Indonesia Based on the Principles of Good Legislation," *Journal of Indonesian Legal Studies* 8, no. 2 (November 5, 2023), <https://doi.org/10.15294/jils.v8i2.69262>.

⁴⁰ Helen Xanthaki, *Drafting Legislation Art and Technology of Rules for Regulation* (London: Hart Publishing, 2014).

⁴¹ Maria Mousmouti, "Drafting Legislation. Art and Technology of Rules and Regulation Helen Xanthaki London: Hart Publishing, 2014, 402 Pp. £51.70," *European Journal of Risk Regulation* 9, no. 1 (March 22, 2018): 177–79, <https://doi.org/10.1017/err.2018.6>.

term limits would thus strengthen the rule of law and reinforce Indonesia's democratic commitments.

Secondly, political parties significantly influence the establishment of legislative term limits in Indonesia. Voluntary national organizations, rooted in Pancasila and the 1945 Constitution, embody collective ideals and protect the interests of their members, the nation, and the state. The first precept of Pancasila establishes belief in the divine as the essential moral foundation for state life and social interactions. The second precept, which emphasizes "just and civilized humanity," calls for respect and justice for all individuals, irrespective of their political beliefs, socio-economic status, or ethnic background. The third precept, "the unity of Indonesia," highlights the nation's unique identity within its diversity, while the fourth, "democracy guided by wisdom in deliberation," emphasizes the importance of deliberative accountability to divine values, human dignity, and national solidarity. The fifth precept emphasizes the importance of comprehensive social justice, embodying Soekarno's vision of a society that harmonizes political, economic, and social equity.⁴² Despite the stated principles, numerous Indonesian parties continue to exhibit a high degree of centralization around their chairpersons. This concentration of power restricts internal democratic processes and compromises the foundational values that ought to inform equitable term-limit policies.

This concentration of authority often results in a highly personalized leadership model, where the chairperson wields excessive and largely unchecked power. Such centralization undermines internal party democracy and fosters an environment susceptible to corruption, patronage, and authoritarian practices—contradicting the democratic values political parties are meant to uphold. Therefore, the chairman and political parties must have clear policies or rules. With the limitation of the terms of office of legislative members, it is certainly fairer, especially for internal parties. This is in line with the implementing criteria for a democratic government; the open political recruitment and the fulfillment of basic rights. In a democratic system of government that allows for the rotation of power, an open political recruitment system is indeed required. A power rotation system requires inclusive political recruitment, giving all eligible citizens equal opportunity to compete for public office.

Accordingly, institutionalizing legislative term limits would enhance public access to political participation and reinforce parties' role as mechanisms for political recruitment. In this context, limiting the terms of office for members of the legislature supports the realization of fundamental rights, including the right to participate in government, freedom of expression, freedom of assembly and association, and access to a free press. Moreover, term limits would encourage political parties to develop and promote new, competent cadres, thereby ensuring sustainable political regeneration.⁴³ By promoting competent new cadres, parties contribute to the creation of responsive legal norms that reflect evolving public needs.⁴⁴

This study does not seek to deny any individual's right to vote or be elected within a democratic framework. Rather than rejecting term limits, emphasis should be placed on improving performance and enabling generational renewal. The primary concern is the unchecked accumulation of power by an individual through indefinite tenure. Instead of dismissing the argument for term limits, attention should also be directed toward evaluating the quality of legislative output and the generational renewal of parliamentary membership. As society evolves, each generation brings distinct understandings and perspectives on legal and social issues, requiring lawmakers who can adapt to and legislate for emerging social realities. Periodic renewal ensures that democratic institutions remain responsive and aligned with the public will.

⁴² Joko Setiyono and Aga Natalis, "Universal Values of Pancasila in Managing the Crime of Terrorism," *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 15, no. 2 (July 28, 2023): 48–63, <https://doi.org/10.5130/ccs.v15.i2.8084>.

⁴³ Junaidi Junaidi, "Recruitment/Regeneration Function of Political Party in Indonesian Local Elections," in *Proceedings of the Riau Annual Meeting on Law and Social Sciences (RAMLAS 2019)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/assehr.k.200529.291>.

⁴⁴ Terry Allen, "The Politics of Regeneration," *Housing, Theory and Society* 18, no. 3–4 (2001): 136–47, <https://doi.org/10.1080/14036090152770500>.

4. Conclusion

According the background and analysis presented in this study, it can be concluded that the absence of term limits for legislative members presents significant legal and democratic deficiencies. Foremost is the lack of legal certainty, as justifications for the unrestricted tenure of legislators often lack a sound legal basis. The protection of constitutional rights to be elected—runs counter to democratic principles that are upheld in the regulation of executive elections. Furthermore, the concentration of power over extended periods opens the door to potential political abuses, while the failure to renew legislative leadership underscores the inadequacy of political parties in developing capable and forward-looking cadres. In response, the establishment of clear and binding term limits within the legal framework is essential. Political parties must also play a proactive role in fostering and preparing new, competent candidates to ensure effective political regeneration. These reforms are critical to strengthening legislative quality and safeguarding the integrity of Indonesia's democratic constitutional order under the rule of law.

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