



# Juridical Analysis of the Office Term of Legislative Members in the Republic of Indonesia

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## ABSTRACT

The New Order has taught us that unrestricted terms of office tend to be corrupt and used to retain power. The absence of term limits for legislative members of the House of Representatives allows incumbents to re-sit in the House of Representatives for more than 10 years or 2 terms of office, making the legislature a potentially corrupt institution. This study aims to examine the ideal term of office for legislative members (DPR) in the Republic of Indonesia to realize a healthy democracy. The analysis method is normative legal research with a statute approach and a conceptual approach. with the conclusion that Article 76, paragraph 4, of Law Number 17 Year 2014 concerning MPR, DPR, DPD, and DPRD needs to be revised by adding the phrase "Can be re-elected in the same position, only for one term of office." as an affirmation of the term of office of the DPR, which is only two periods.

## ABSTRAK

Orde baru telah mengajarkan kita bahwa masa jabatan yang tidak dibatasi cenderung korup dan digunakan untuk mempertahankan kembali kekuasaannya. Tidak diaturnya batas masa jabatan anggota legislatif DPR. membuat para Petahana bisa duduk kembali dikursi dewan lebih dari 10 tahun atau 2 periode masa jabatan, Ini membuat lembaga legislatif berpotensi menjadi lembaga yang korup pula. Penelitian ini bertujuan untuk menelaah masa jabatan yang Ideal bagi anggota legislatif (DPR) di Republik Indonesia untuk mewujudkan Demokrasi yang sehat. Metode yang digunakan dalam menganalisis adalah metode penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan (statute approach) dan pendekatan konsep (conceptual approach). Dengan kesimpulan Pasal 76 ayat (4) Undang Nomor 17 Tahun 2014 Tentang MPR, DPR DPD dan DPRD perlu direvisi dengan menambahkan Frasa "Dapat dipilih kembali dalam jabatan yang sama, hanya untuk satu kali masa jabatan". Sebagai penegasan terhadap masa jabatan DPR yakni hanya 2 periode saja.

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## I. INTRODUCTION

The post-independence Republic of Indonesia has embraced the Trias Politica doctrine, where power is divided into three parts: the legislative (law makers), the executive (law executors), and the judicial (law executor supervisors). The doctrine of Trias Politica was first proposed by John Locke (1632–1704), an English philosopher, in his book *Two Treatises on Civil Government*, which divides institutions into three categories: legislative, executive, and federative (Yani, 2018). Then, in his book *L'esprit des lois*, or in English, *The Spirit Of The Laws*, Montesquieu (1689-1755), a French

philosopher, divides the state into three parts: legislative, executive, and judicial, and at that level it was defined as the separation of powers. This theory was then widely used by many countries around the world, until now.

The big idea behind the separation of powers put forward by Montesquieu regarding the need for the division of powers between the branches of government is to avoid the occurrence of one absolute power (Kanang, 2018). Jimly Assiddiqie argues that the separation of powers is horizontal in the sense that power is separated into functions that are reflected in state institutions that are equal and balance each other (checks and balances) (Ashidiqqie, 2005). The division of power is vertical in the sense that the realization of power is distributed vertically downward to the state's high institutions under the institution holding the sovereignty of the people, which is the institution holding the sovereignty of the people, formerly known as the People's Consultative Assembly (MPR).

The fundamental values that have underpinned the limitation of power are to prevent the domination of power by state administrators as well as to protect human dignity. The limitation of power practically leads to and aims at the welfare of society. The fundamental values that have underpinned the limitation of power are to prevent the domination of power by state officials as well as to protect human dignity. The limitation of power practically leads to and aims at the welfare of society (Alfauzi & Effendi, 2020)

The "98" Reformation has proven that unrestricted power in terms of tenure or periodization will only divide the nation. Reformasi was born as an answer to the various crises that hit various aspects of people's lives. Reformasi was seen as a movement that could not be negotiated anymore. (Sirot & Atmaja, 2020). The spirit of constitutional change that emerged in the form of constitutional supremacy, the necessity and importance of limiting power, more strictly regulating relations and powers between branches of state power, and strengthening the system of checks and balances between branches of power—all of this was reflected in the nation's political consensus as outlined in the 1945 Constitution of the Republic of Indonesia. "Among the changes are in the state and government sector; the structuring efforts include institutions in the legislative, executive, and judicial realms" (Aristeus, 2009).

The term of office of DPR RI members is stated in Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional People's Representative Council, commonly called the MD3 Law. Namely: Article 76, paragraph 4: "The term of office of a member of the DPR is five (five) years and ends when the new member of the DPR takes the oath or pledge." Thus, there is no provision that regulates the limitation of the periodization of members of the people's representative institutions.

The lack of term limits for DPR legislators means that incumbents can be re-seated for more than 10 years or two terms. This regulation allows any member of the DPR to try to secure his or her position for as long as possible. Power has a tendency to act dominantly, to control and influence so that power is strong. Power tends to strengthen and maintain power. Therefore, the law serves to limit the power that exists in the State (Budiarjo & Ambong, 1993). The problem in the presidential system of government lies not in the executive power, but rather in the legislative power (Isra Saldi, 2010). It does not rule out the possibility that irregularities within the legislative body can occur because of its dominant and unrestricted power.

This research is certainly different from similar studies and writings because researchers not only examine the urgency of limiting the period of office of legislative members (DPR), but also examine the concept of the ideal period of office for legislators in the Republic of Indonesia to realize a healthy democracy according to the ideals of the nation. as well as comparing the term of office of the DPR RI with the term of office of the Philippine Parliament.

## II. RESEARCH METHOD

The research used is normative legal research, also called doctrinal research (Ali, 2011). The research relies on library research by using a statutory approach and a conceptual approach. as an analytical tool in examining the issue (Marzuki, 2009).

## III. RESULTS AND DISCUSSIONS

### **The Urgency of Limiting the Term of Office of the House of Representatives**

In general, it can be said that power is the ability of a person or group of people to influence the behavior of another person or group in such a way that the behavior is in accordance with the wishes and goals of the person who has that power (Budiardjo, 2008). The scope of political power not only includes obedience from the public but also involves controlling others with the aim of influencing state actions and activities in the administrative, legislative, and judicial fields.

Principles of Democracy According to Sadek, J. Sulaymān, in democracies there are a number of principles that become standard. Among them are the freedom of speech of every citizen and the implementation of elections to assess whether the ruling government deserves to be supported again or must be replaced (Iryani, 2017). Democratic instruments are used to strengthen elite dominance, especially oligarchies and political dynasties (Ramadhan & Oley, 2019)

According to Maurice Duverger, the emergence and implementation of restrictions on the ruler's power is the result of difficulties and obstacles of a material or material nature that impede the ruler's intention to exercise his power. (Duverger, 1983). Lord Acton once said, "Power tends to corrupt, and absolute power tends to corrupt absolutely." (Power tends to corrupt, and absolute power tends to corrupt absolutely.) In the terminology of constitutional law, this abuse of power by the government is called *onrechtmatige overheidsdaad*.

The democracy that the founding fathers wanted was a substantive democracy that was carried out in deliberation and accompanied by wisdom. This is the ideology of democracy for a nation: not by imposing one's will because one does not understand the noble values of democracy, This is where the law is then placed as a barrier to avoid irresponsible, unlimited freedom. (Wasitaatmadja, 2018).

One of the efforts to reduce or even eliminate the abuse of power is to limit the term of office of a state official, in this case a member of the DPR RI. Long and unlimited power is not suitable for the Republic of Indonesia, which adheres to the principles of democracy and not monarchy. Every citizen has the same right to participate in developing the Republic of Indonesia. As stated in the 1945 Constitution of the Republic of Indonesia, Article 28C Paragraph (2) states, "Every person has the right to advance himself in fighting for his rights collectively to develop his community, nation, and country" and Article 28D Paragraph (3) states, "Every citizen has the right to obtain equal opportunities in government" (UUD NRI 1945).

Term limits are a way to prevent the over-authorization and arbitrariness of public officials, including members of the DPR. Too much time in office can lead to a legislator abusing their authority through corruption. Many corruption cases have ensnared members of the House of Representatives, for example the E-KTP corruption case involving the Speaker of the House of Representatives for the 2014-2019 period, Setya Novanto, and many more, proving that corrupt practices are not only carried out by the executive but have penetrated the legislature.

Political power achieved through corruption will result in governments and community leaders that are not legitimate in the eyes of the public. Widespread corrupt practices in politics such as fraudulent elections, violence in elections, money politics, and others can also lead to the destruction of democracy because, to maintain power, corrupt rulers will use violence (authoritarian) (Susetawan, 1997). And even corruption will spread throughout society's social fabric.

Limiting the term of office of members of the legislature, in this case the House of Representatives, can provide opportunities for other citizens who have the qualities to take over the seats of the council with their new ideas. Limiting the term of office of the DPR should be an urgent thing to do as a form of equal rights before the law, and it is unethical for a person or group to occupy the position of DPR for life because there are no restrictions governing it. Do not allow those who are supervised and supervise to commit corruption because a healthy democracy is the creation of a strong check and balances system.

### **Regulating the Period of Office of the House of Representatives in Line with the Principles of Democracy in Indonesia**

Limitation is something that needs to be done in the framework of legislative reform, and to change it, it must be updated in the legislation. The revision of Act No. 17 of 2017 on the MPR, DPR, and DPD as *Ius Constituendum* is a rule that is awaited. When referring to Act No. 12 of 2011 on the Establishment of Legislation, the provisions of Article 96 of Act No. 12 of 2011 on the Establishment of Legislation should be implemented and not just a formality. In this case, the state must create a forum to accommodate it and a clear flow to convey public participation. So far, the mechanism for public participation is still vague, so the existence of public participation in the formation of laws and regulations is only seen as a formal requirement (Putra, 2020). Meanwhile, so far, the DPR and the government have done more socialization than participation, even though socialization and participation are two different things. Participation is to accommodate aspirations; the public provides input into the drafting of the bill, while socialization is to introduce existing drafts.

The rule of law seeks to harmonize and complement the principles of the rule of law with the principles of popular sovereignty themselves. Because the rule of law without a democratic government will turn into a fascist and repressive state, on the other hand, if a democratic government is not accompanied by law, it will be trapped in the country's journey towards anarchy. (Airlangga, 2019). Since the emergence of the principle of democracy has raised the issue of who plays a role in determining the course of the state as the supreme organisation: the state or society, or vice versa society or the state (Mahfud, 2000).

The fundamental values that have underpinned the limitation of power are to prevent the domination of power by state administrators as well as to protect human dignity. The limitation of power practically leads to and aims at the welfare of society. According to the author, there are at least 3 reasons why Article 76 paragraph (4) of Law Number 17 Year 2014 on the MPR, DPR, and DPD should be revised, namely: (1) There is a legal vacuum; the term of office of the DPR is not clearly explained in Article 76, paragraph 4; the article seems deliberately left hanging so that it has no orders or prohibitions. (2) Affirmation of the term of office of the DPR. If indeed the term of office of the DPR is guaranteed to be more than 2 periods, then it must also be contained in written law so that it becomes a basis for footing. (3) Limiting the term of office of the DPR is as important as limiting the terms of office of the President and Vice President. If the spirit of the 1945 constitutional amendment before the reformation was to place limits on power, it should also apply to the legislature because the legislature is not an angelic institution that is free from abuse of power, especially corruption.

If the executive is limited to two terms of office, the legislative body, with the same reason and spirit of not wanting these two institutions to be filled with corrupt people due to staying too long in power, must be limited to its term of office, but the question arises: what is the ideal period limit for the executive supervisory institution? According to the author, two terms as a member of the DPR are sufficient because ten years in the legislature is a long enough time to be in power as the time owned by the President, Governor, Regent, or Mayor as an executive institution.

5 years for one term and 10 years for two terms is the ideal time for someone to serve as a member of the legislature, because the time is sufficient in the sense that it is not too fast or too long to be in power. This period of time is also able to regenerate the legislature, which will be filled with new

people with new innovations and, of course, will also revise the failures of previous legislators and maintain the achievements of previous legislators who have expired.

### **Comparison of Term Limits for Members of the Legislature (DPR) with the Philippines**

The Philippines is a unitary democratic republic consisting of 76 provinces. A western colony that regained its freedom on July 4, 1946, the Philippines is a constitutional democracy characterized by limited government powers and a "state of law" (*rechtsstaat*) that is subject to the rule of law and cannot act arbitrarily against its citizens.

Congress in the Philippines consists of members of the Senate and the House of Representatives. To become a member of the Senate or the House of Representatives as a member in the representative body, there is a requirement, namely: A) Senate; (1) Must be a Filipino native. (2) The term of office as a senator is six years; a senator may not serve more than two consecutive terms. (3) To be a member of the Senate, one must be at least 35 years old on election day and be able to read and write. B) House of Representatives: (1) The House of Representatives alone consists of 250 members. (2) The House of Representatives serves for three years and can serve up to three consecutive terms beyond which it cannot serve again as a member of the House of Representatives. (3) To be a member of the House of Representatives, one must be at least 25 years old. (4) They must be elected from legislative districts divided among provinces, cities, and the Manila Metropolitan Area according to their respective populations.

Broadly speaking, the Philippine Congress, or the Philippine legislature, imposes term limits for its legislative bodies, namely the Senate for only 2 terms and the House of Representatives for 3 terms. (Article VI Konstitusi Filipina). One Senate term is six years, while one House term is only three years. This indicates that Indonesia is not the first country to implement term limits for its legislature. Indonesia could emulate the periodization system of the Philippine legislature as a reference for amending the regulation on term limits for the House of Representatives. In setting term limits for the House of Representatives, Indonesia must be confident in setting and implementing them.

## IV. CONCLUSION

Term limits for DPR members are urgent in order to reform DPR. The limitation also aims to create a fresh and innovative DPR environment at least once every 10 years, as well as limit the term of office of the DPR in an effort to realize substantive democracy. The principle of check and balances must be practiced properly so that those who supervise and are supervised do not commit corruption. Limiting the term of office of members of the House of Representatives is an important form of reform within the Legislative Body that aims to prevent a member of the House of Representatives from being in power for too long, allowing power to corrupt.

Regarding term limits, Article 76, paragraph 4 of Law Number 17 of 2014 on the MPR, DPR, and DPRD needs to be revised by adding the phrase "can be re-elected in the same position, only for one term of office." as an affirmation of the term of office of the DPR. 2 terms is enough time for a person to serve as a member of the House of Representatives with 1 term of 5 years, so that 2 terms are for 10 years. This is an ideal period of time for a person to serve as a member of the House of Representatives. If we look at the Philippines, which limits the term of office of its legislature, then limiting the term of office of the legislature is not a taboo in democracies, especially for countries that adhere to the Trias Politica system.

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