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Urgency of Limiting the Terms for Members the House of Representative: A Constitutionalism Perspective

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Abstract

UD NRI 1945 is the highest law in the hierarchy of laws and regulations in Indonesia. One of the principles adopted by the UD NRI 1945 is the principle of constitutionalism. Proof that the UD 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 UD NRI 1945. Meanwhile, the DPR is one of the state institutions mentioned in Chapter VII of the UD NRI 1945 does not regulate term limits. So the aim of this research is to explain the urgency of regulating term limits for DPR members from a constitutionalism perspective. This research is normative legal research using a statutory approach, conceptual approach, case approach and comparative approach. The results of this research show that the absence of regulations regarding term limits for members of members The House of Representative in the UD NRI 1945 is not in accordance with the principles of constitutionalism adopted by the UD NRI 1945. The urgency of limiting the terms for members 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

In order 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 (Ernawan and Ruslie 2023). This article focuses in a study regarding the urgency of limiting the terms of office of members of the DPR and 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 (Junadi et al. 2021). 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, but 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 Mhammad Al Kautsar (Al Kautsar 2019). This article focuses on studies regarding limitations on the term of office of legislative members in general, but 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.

²⁵ The 1945 Constitution of the Republic of Indonesia (herein⁴⁰ 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) (Sumadi 2016). UUD NRI 1945 was first ratified as the constitution of the Indonesian state at the¹³ session of the Preparatory Committee for Indonesian Independence on 18 August 1945 or the day after the independence of the Republic of Indonesia, which was proclaimed by Soekarno and Mohammad Hatta on 17 August 1945. UUD NRI 1945 in general regulates the² limitations of power, structure, composition, power and basic functions of the highest state org⁵ns, 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 the rights of citizens which are called constitutional rights.

⁵⁴ 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 (Asshi⁴²qie 2018). 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 depart⁴¹ments, and prescribing the extent and manner of the exercise of sover¹¹n 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 regulates, distributes, and limits the functions of its different departments, and determines the extent and manner of the exercise of sovereign power" (Black 2009). Meanwhile the ism is an understanding or idea.

Proof that UUD NRI 1945 adheres to the principle of constitutionalism²² can be proven by the existence of Article 7 of UUD NRI 1945 which regulates the limitation of the term of office⁵ the President, then Article 23E which regulates the limitation of the term of office of members of the Supr¹me 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 Su³reme Court (MA), then there is Article 24B of UUD NRI 1945 which regulates the limitatio³¹ of the term of office of Members of the Judicial Commission (KY), and finally in Article 24C The 1945 Constitution of the Republic of Indonesia regulates the¹⁵ limitation of the term of office of Constitutional Court (MK) Judges. Although everything is not regulated directly in the 1945 Constitution of the Republic of Indonesia, the limitatio⁶s 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) as one of the state institutions mentioned in Chapter VII of UUD NRI 1945 does not regulate this matter, either directly in UUD NRI 1945 or in law. Even though this power has the potential to be used arbitra³³ 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 absence 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 legislative candidate, he can rule forever. This will certainly have a negative impact on our constitutional system, whether it is used to act arbitrarily, or can give rise to very serious political problems (Greenberg 1994).

Meanwhile, if we return to the principles of constitutionalism adopted by UUD NRI 1945, he shou⁴⁷ be given clear boundaries, such as the provi¹sions in Article 7 of UUD NRI 1945 which limits the term of office of the President to only 5 (five) years and after that he can be

re-elected in the same position. , only for one term of office. If you look at research conducted by Herman Dirgantara, 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 (Anshary 2021). 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 as regulated in the Philippine Constitution in Article VI, Section 4 (four) and Section 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 the process of 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. So 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.

1. 2. Methods

This research is legal research, namely a process to find a truth, coherence or legal rules, legal principles and legal doctrines in order to answer the legal issues faced (Marzuki 2021). The type of legal research used is normative legal research. The problem approaches used are statutory, conceptual, case and comparative approach (Marzuki 2021). 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 the making of legislation and court decisions which have permanent legal force or in crach. Meanwhile, the sources of secondary legal materials are 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.

2. 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 must be regulated by the DPR, 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 consent of the citizens themselves, namely through the intermediary of their representatives in parliament as the people's representative institution (Asshiddiqie 2019). 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 plays the role of representing 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 are directly elected by the people through general elections. Through the DPR, the people can express their aspirations and interests and elect leaders who are considered to represent their interests. 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 are in favor of 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 which is explicitly regulated in UUD NRI 1945 is apparently 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, if we look back at UUD NRI 1945 as a written constitution and at the same time being the highest legislation in Indonesia which adheres to the principles of constitutionalism, this should need to be limited.

After the amendments to UUD NRI 1945 have at least brought a new direction in the implementation of a balanced Indonesian constitutional system, this can be proven by 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 (Akbar 2013). 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 (Isra 2003). Because the DPR's authority is only limited to giving approval to 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 give approval 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. If we 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 F-PBB representative or spokesperson Hamdan Zoelva, on that occasion Hamdan Zoelva said (Indonesia 2010):

"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. What we regulate in this part of the DPR is 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 apparently did not become part of the discussion after that, so the discussion regarding the terms of office of DPR members stopped there. In fact, if the proposal then comes a debate and further discourse, it is likely that various proposals will emerge to limit the term of office of members of the DPR 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) which has 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 made in exercising 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 term of office of the President are strictly regulated in the 1945 Constitution."

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

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 (Asshiddiqie 2018). If Indonesia is deemed not to adhere to the principles of constitutionalism, then of course 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 as 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 DPR (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 as 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 are proof 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.) at that time introduced an amendment to the United States Constitution to impose term limits on members of Congress. The amendment would limit United States Senators to 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 (Cruz 2023):

“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 totally unaccountable to the American people. Terms limits brings about accountability that is long overdue and I urge my colleagues to advance this amendment along 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 ought to serve for a reasonable period of time and then return home to live under the laws we enacted. That’s why I’ve proposed a constitutional amendment to establish term limits in the legislative branch, and I am honored that Sen. Cruz has introduced a companion bill over in the Senate. This effort will go a long way to positively impact American politics, 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 that “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."

It is true that the DPR is 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 carry out arbitrary actions (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 Acton with the adage "power tends to corrupt, absolute power corrupts absolutely" (power tends to corrupt, and absolute power is definitely corrupt). 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. This is none other than because the DPR members are filled with people who have served for a long time. In fact, if this is done with restrictions and then new people appear, it is likely that the DPR will 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 periodical restrictions or in the form of age restrictions. Because these two things currently apply to various state institutions which are 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:

1. To uphold the principles of constitutionalism

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 (Asshiddiqie 2018). 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" (Black 2009). 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 (Isra 2019). 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 (Mahmodin 2017). 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. Basically, 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 simply 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 (Nasution 2009). In line with this, Bambang Widjojanto added 5 (five) characteristics and at the same time the essence of constitutionalism, including (Arsyad 2000):

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 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, the construction of a power or government that is 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 really depend on the desire and awareness of political forces. 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 (Alfauzi and Effendi 2020). 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 (Syafriadi 2019).

The principle of limiting power or 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. If compared to building a house, constitutionalism is used as the foundation on which the constitution is based. Thus, the terms constitutionalism and constitution cannot be separated (Arif 2017). Therefore, a democratic country must implement and implement constitutionalism in the soul of its nation 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 (Budiarjo 1998). With the explanation above, to create an orderly state it is necessary to apply the principles or concepts of constitutionalism. So the term of office of the DPR needs to be limited.

2. To prevent abuse of power

The rule of law is intended to prevent arbitrary actions carried out by the authorities (Ence 2008). 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 sovereignty of the people 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.

Regulation and limitation³⁷ of power is an essential characteristic of the principle of constitutionalism and is also the main task of the constitution, so that the possibility of³⁰ 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 iron⁴ 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 sole⁴ 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 people's goodness is not swallowed up by the iron law of power (Asshiddiqie 2018).¹

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 that occurs is the result of mere ambition for⁴⁴ power which 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 that has little potential to carry out arbitrary actions. In fact, power must still be regulated and limited even if it is filled by good people (Asshiddiqie 2018). 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. So there is no longer any thought about how to become a member of the DPR again for the next general election.

3. ²⁰ uphold legal certainty

Legal certainty is the main characteristic of a rule of law (Hadi 2021). The terms legal certainty in foreign language literature are Rechtssicherheit (German), Securite juridique (France), Cartezza del Diritto (Italy), La seguridad juridical (Spain), 49 Rattsakerheit (Sweden), Rechtzakerheid (Netherlands), Legal Certainty, Legal determinacy, and Legal security (England). From this terminol²⁶y, legal certainty consists of 2 (two) words, namely certainty and law. Thus, we can define legal certainty as the existenc¹²e of certain and definitive laws. Legal certainty itself is the oppos¹⁶ite of legal uncertainty. In the rule of law tradition, legal certainty is part of the formal aspect of the rule of law where the requirement¹⁶ that laws should be validly made and publicly promulgated, of general application, stable, clear meaning, consist¹²ent and prospective (Totskyi 2014). With the above conditions, everyone can obtain protection from the arbitrary use of power, both in the creation and implementation of the la²w.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the⁴⁸ law is implemented properly (Martokusumo 2009). In another expression, the essence of legal certainty is the existence of laws (legal norms) that are known by legal subjects regarding permitted and prohibited actions and their legal consequences. Legal certainty also requires accessibility and predictability of the law. To make this happen, the law must be formulated clearly, precisely, unambiguously and with other requirements. Satjipto Rahardjo himself said that legal certainty is certainty about the law itself (sicherheit des rechts sellbst) (Rahardjo 2006). 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 achiev²⁶ed.²⁷

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

(Deffains dan Kessedjian 2015). 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 (Totskyi 2014). In fact, 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) (Stone 2006). Laws that do not provide certainty lose their meaning as law.

Legal certainty is something that is essential in a legal state to create order and regularity, as well as 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 formation (law making), law discovery (law finding), and law application (law applying). So, 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.

4. To strengthen the implementation of 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 (Riqiey et al. 2022). 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 of them is by placing clear restrictions on periodization and length of term of office. If there is no regulation regarding limiting 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. This power is transformed in state organizations through the theory of social agreement 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, as well as the organization of state administration. In modern democracy, the existence of the state 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 the founding of a democratic state, namely the constitution. Bearing in mind 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) (Syafa'at 2014).

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, belief or cultural backgrounds, as follows. 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 and at the same time aim to protect human dignity. This limitation of power practically ends and aims at the welfare of society.

The term of office is always a matter of debate every time 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 the majority of parliament members are filled with old faces. This seems to violate the 5th 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 Mochtar 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 fulfilling (to fulfill) citizens' rights and human rights or human rights (Suhardja 2010).

In relation to the discussion regarding the constitution above, the Indonesian state itself uses the concept of democracy in the existing constitutional provisions. So 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 has a very big influence on the 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 it is not impossible that restrictions on power in state policies 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 (Alfauzi dan Effendi 2020).

5. To prevent authoritarianism

Authoritarianism is a government that is run using an iron fist, by one or a few people in power, with the aim of perpetuating their power and taking as much profit as possible (Susanti 2022). 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 as explained by Cheryl Saunders who said that dominant and unlimited power could potentially erode the democratic system and lead to authoritarianism (Saunders 2022). By limiting power, elected DPR members will have to contest ideas and improve internal cadre formation to produce new successors and potential leaders.

6. To carry out regeneration

Limiting the term of office of DPR members will actually 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 members of the council. Even though currently anyone can nominate to become a member of the DPR, efforts to limit the terms of office of DPR members will really 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 it is possible for the majority faction to 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 the constitutional rights of every citizen to have the opportunity 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. The regeneration cycle will run faster, party cadres and non-party regional cadres will always be filled with younger generations who are ready to replace their senior positions. From there you will also find new seeds of potential new leaders who have new enthusiasm.

The poor leadership regeneration within political parties which can only rely on their seniors does not give juniors within the party the opportunity to nominate themselves as members of the council. 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 take on the role of replacing seniors who have been council members for two or more terms. Limiting the term of office of DPR members is not only beneficial for young people or the millennial generation, but it will also be beneficial for political party cadres who have served in political parties for a long time. So that he will be given the opportunity 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 the regeneration of personnel who occupy the 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 cadres being elected as legislative members. By creating this regeneration, it does not mean getting rid of people who have high quality and integrity, but this is a principle that must be obeyed and implemented, namely that power must be limited. This regeneration will also create new people who in the future will be people of high quality and integrity.

Picture 1. The Tomb of Nurse Ursulin

3. 4. **18** Conclusions

Based on the results of research and analysis carried out through studies as described in the previous chapters, this research comes to the following conclusions. UUD NRI 1945 adheres to the principle of constitutionalism. Constitutionalism is essentially 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 which is 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 all regulated and limited. So this causes there to be 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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6. 7. **Reference**

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