

Reconstruction of Legislative Members' Term Rules Based on the Principle of Justice

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DOI: <https://doi.org/10.36348/sijlcj.2024.v07i09.003>

| Received: 19.06.2024 | Accepted: 30.07.2024 | Published: 20.09.2024

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Abstract

The presence of the House of Representatives in Indonesia's constitutional system significantly supports the development of democracy, as they serve as the people's representatives and voice. Currently, it is essential to implement term restrictions for legislative members, primarily for societal benefit. This study addresses the following research problems: Why is the current rule of legislative members' terms not just? What are the weaknesses of the current legislative term rules? How should the rule of legislative members' terms be reconstructed based on the principle of justice? Employing a constructivism paradigm, this research uses a sociological juridical approach and a descriptive research type. Data sources include primary data from field research and secondary data from primary, secondary, and tertiary legal materials. Data collection methods encompass observation, interviews, and literature study, with qualitative data analysis. The findings indicate that the current rule of legislative members' terms is unjust due to the lack of term restrictions, leading to increased risks of corruption, bribery, collusion, and nepotism. Weaknesses in existing rules on criminal sanctions for corruption, bribery are evident in the legal substance, structure, and culture. The legal substance lacks clear provisions on term restrictions, and the legal structure fails to address the urgency of implementing term restrictions for House of Representatives of Indonesia's and Regional Representative Council members. Additionally, there is a need to raise public awareness about the importance of term restrictions for legislative members. The study suggests reconstructing criminal sanctions rules against corruption, bribery based on justice values, which involves revising both values and norms. This includes transforming previously unjust rules into just ones and amending the legislative term rules according to the principle of justice, as outlined in Law No. 7 on 2017 concerning General Elections, Articles 240(1) and 248.

Keywords: Justice, Legislative, Reconstruction, Rule, Term.

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1. INTRODUCTION

The presence of the house of representatives in Indonesia's constitutional system significantly supports the current development of democracy, as they serve as the people's voice and representatives [1]. Today, it seems necessary to impose term restrictions on legislative members. Various considerations justify this limitation, primarily for societal benefit. The lack of term restrictions for legislative members has led to increased

corruption, bribery, collusion, and nepotism [2]. The longstanding presence of certain members in the House of Representatives of Indonesia's has not resulted in greater public appreciation or prioritization of the people's interests; instead, they often prioritize their party's interests [3].

Human rights are inherent to every individual and encompass various rights enshrined in declarations and covenants [4]. The right to equal conduct before the

¹ Purbopranoto, K. (1975). *Beberapa catatan hukum tatapemerintahan dan peradilan administrasi negara*. Alumnus.

² Darajat, R. T. (2005). *Analisis Kebijakan Publik (Pelaksanaan Pengadaan Barang dan Jasa Pemerintah Yang Bebas KKN (Korupsi, Kolusi dan Nepotisme) di Kabupaten Majalengka (Public Policy Analysis (Supplying Goods and Service Implementation of Govern*

is Free to Corruption, Collusion, Nepotism) in Majalengka Regency) (Doctoral dissertation, Program Pasca Sarjana Universitas Diponegoro).

³ Ridwan, H. R. (2006). *Hukum administrasi negara*.

⁴ Kurniawan, A. R. (2013). *House of Representatives Position (DPR) Completion of Human Rights Violations*. *Jurnal HAM*, 4, 22.

law is one such guaranteed right, rooted in the concept of human dignity, which must not be limited or diminished. In performing their duties and influences as members of the legislative body, the law imposes limitations to prevent arbitrary actions and the practice of corruption, bribery, collusion, and nepotism [5].

In a welfare state, the scope of state administration activities is broad and diverse, reflecting the dynamic development of society that demands rule and involvement from state administration. Therefore, government positions and officials, who are responsible for governmental and societal activities, operate under public law and are subject to public law provisions, particularly administrative law [6].

The authority to make laws must reside in a body with specific influences to do so. Without a designated body, different groups or individuals could create laws for their own interests. In a democracy where rules are based on people's sovereignty, the legislative body is considered the highest authority for law making [7]. Restrictions on government influence are enshrined in the constitution, which is essential for any state. The constitution not only outlines the mechanisms of state institutions but also defines the rights and obligations of citizens.

The 1945 Constitution preamble mentions "justice" and its derivatives multiple times, highlighting the nation's obligation to accomplishing social justice for all Indonesians. These ideals are reflected in the republic and the rule of law, aiming to uphold human rights, equality in governance, the supremacy of law, and protection against arbitrary actions.

As a rule of law state, Indonesia's governance practices must align with legal frameworks. However, ambiguities and inconsistencies in the law can lead to legal disharmony and overlapping authorities. The multitude of rules can cause conflicts, especially if different parties influence the law-making process. Post-reform, the political will to improve the national legal system has been evident, particularly during the transition period when the government successfully transferred influence to a more democratic regime and overhauled executive and legislative structures.

⁵ Rahma, V., & Yudha, A. K. Balancing Democracy and Adz-Dzari'ah Principles: Legal Reasoning on Term Limits for Political Party Chairpersons in Indonesia. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 12(2).

⁶ Effendi, O. (2020). Pembatasan Kekuasaan Berdasarkan Paham Konstitusionalisme Di Negara Demokrasi. *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7(2), 111-133.

⁷ Butt, S. (2015). *The constitutional court and democracy in Indonesia*. Brill.

The government's first success was conducting direct, general, free, secret, honest, and fair elections, which opened the democratic space and allowed new political parties to participate in the 1999 elections. The People's Consultative Assembly amended nine constitutional articles in 1999, including Article 7, which addresses the term restrictions for the president and vice president. However, the reform euphoria did not extend to harmonizing legislation, as demonstrated by the significant number of judicial reviews submitted to the Constitutional Court from 2003 to 2017. The Constitutional Court has played a crucial role in safeguarding the constitution, underscoring the ongoing need for good faith in national law-making.

Given the extensive role of the state in administering various activities, the absence of term restrictions for legislative members creates a significant risk of prolonged influence, which can lead to corruption, bribery and inefficiency. Establishing term restrictions would not only curb the risks of corruption, bribery but also ensure the continuous infusion of new perspectives and ideas into the legislative process [8]. This, in turn, would align with the principles of justice and democratic governance, as mandated by the constitution.

Furthermore, implementing term restrictions would foster a more dynamic and responsive legislative body, better equipped to address the evolving needs of society. It would also promote public trust and confidence in the legislative process, as citizens would perceive a fairer and more equitable distribution of political opportunities. In conclusion, the reconstruction of legislative term rules based on the principle of justice is essential for enhancing the integrity, effectiveness, and legitimacy of Indonesia's democratic system.

2. RESEARCH METHODS

The research methodology involves several steps to address the formulated problems and achieve the research objectives. It employs a constructivism paradigm, viewing legal science as primarily concerned with legislation without questioning its justice or utility for society. A sociological juridical approach is used, conceptualizing law as an observable empirical phenomenon [9]. The research type is descriptive analytical legal research, which involves studying literature (secondary data) and analysing it in detail [10].

⁸ Watch, I. C. (2017). Tren Penanganan Kasus Korupsi. https://antikorupsi.org/sites/default/files/dokumen/tren_korupsi_2015_dan_2010-2015_-_151124_0.pdf

⁹ Soerjono Soekanto dan Sri Mamudji, 2001, *Penelitian Hukum Normatif suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p. 13-14

¹⁰ Ediwarman, 2010, *Monograf, Metodologi Penelitian Hukum*, Program Pascasarjana Universitas Muhammadiyah Sumatera Utara, Medan, p. 24

The study utilizes both primary data, gathered from field research and interviews, and secondary data from literature and legal documents. Data collection methods include observation, which measures respondents' attitudes and records phenomena, and structured interviews conducted face-to-face or via technology [11]. Secondary data is obtained through library research, examining relevant literature and written sources. Finally, the data is analysed qualitatively to describe and interpret the information, aiming to clarify the research problems [12].

3. RESULTS AND DISCUSSION

3.1. Overview of Foreign Countries' Rules on Legislative Members' Terms Based on the Value of Justice

The house of representatives in Indonesia plays a crucial role in supporting democracy by representing the people. However, the lack of term restrictions for legislative members has led to increased corruption, bribery, collusion, and nepotism [13], with members often prioritizing party interests over public welfare. Human rights, including equal conduct before the law, must be

upheld, and legal limitations should prevent arbitrary actions and corruption, bribery, collusion, and nepotism practices. In Indonesia's welfare state, extensive rule and involvement from state officials are required, with law making authority residing in a designated body to avoid individual or group dominance. The 1945 Constitution emphasizes justice and social equality, aiming to uphold human rights and the rule of law. Despite post-1999 democratic reforms, the absence of legislative term restrictions continues to pose risks of continued influence, corruption, bribery, and inefficiency [14]. Establishing term restrictions would mitigate these risks, ensure a constant incursion of new ideas into the legislative process, and promote justice and democratic governance [15].

To explore best practices for legislative term rules, we can look at how other countries manage their legislative bodies. The following table summarizes legislative rules in the United States, Australia, and Austria, highlighting their constitutional structures, election processes, and the implications of their legislative frameworks.

Table 1: Overview of Foreign Countries' Legislative Rules

Country	Overview
United States	The U.S. Constitution, effective since 1789, divides federal government into three branches: executive, judicial, and legislative. Legislative influences are vested in a bicameral Congress, consisting of the Senate and the House of Representatives [16]. Members of the House serve two-year terms, elected biennially, while Senators serve six-year terms, with elections every two years for one-third of the Senate. Requirements include a minimum age of 25 and 7 years of citizenship for the House, and 30 years of age and 9 years of citizenship for the Senate. Initially, Senators were chosen by state legislatures, but since the 17th Amendment in 1913, they are directly elected by the public. The Vice President serves as the President of the Senate, voting only to break ties [17].
Australia	Australia's government, based on liberal democratic traditions, is a constitutional monarchy with a federal structure. The Commonwealth of Australia was established in 1901, with its Constitution outlining the division of influences among the legislative, executive, and judicial branches [18]. The Parliament is bicameral, comprising the House of Representatives and the Senate. Senators, representing states, serve six-year terms, with half the Senate elected every three years. The Governor-General, appointed by the Queen on the Prime Minister's advice, acts as the representative of the monarch. Legislative amendments require a national referendum, needing approval from a majority of voters nationwide and in at least four of the six states. The Constitution can only be amended by referendum [19].
Austria	Austria's Federal Constitutional Law, consisting of 8 chapters and 152 articles, establishes the country as a democratic republic with laws originating from the people. The Constitution designates Austria as a federal

¹¹ Samuel, (2018), *Metode Pengumpulan Data dalam Penelitian*, Artikel diakses melalui <http://ciputrauceo.net/blog/2016/2/18/metode-pengumpulan-data-dalam-penelitian/> pada 29 Juni 2023.

¹² Norman K. Denzin, Yvonna S. Lincoln, 2009, *Handbook of Qualitative Research*, diterjemahkan oleh Dariyatno, Badrus Samsul Fata, Abi, John Rinaldi, Putaka Pelajar, Yogyakarta, p. 137

¹³ Azra, A. (2002). Korupsi dalam perspektif good governance. *Indonesian Journal of Criminology*, 2(1), 4218.

¹⁴ Sherlock, S. (2022). The Consequences of Halfway Constitutional Reform. *Constitutional Democracy in Indonesia*, 29.

¹⁵ Sunstein, C. R. (1987). Constitutionalism after the new deal. *Harvard Law Review*, 421-510.

¹⁶ Lee, F. P. (1940). Legislative and Interpretive Regulations. *Geo. LJ*, 29, 1.

¹⁷ Willoughby, W. W. (1910). *The constitutional law of the United States* (Vol. 1). Baker, Voorhis.

¹⁸ Holmes, S., & Argy, S. (1997). Reviewing existing regulations: Australia's national legislative review. *Regulatory*, 89.

¹⁹ Galligan, B. (1995). *A Federal Republic: Australia's constitutional system of government* (No. 3). CUP Archive.

Country	Overview
	state, detailing fundamental principles and structures of governance [20]. The Constitutional Court, influenced by Hans Kelsen, plays a crucial role in the judicial system [21]. The Constitution can be accessed and downloaded from resources like the ACE Knowledge Electoral Network, which provides extensive information on electoral processes, capacity development, and electoral assistance services. The ACE Network features include an encyclopedia, comparative data, electoral advice, and information on various regions and countries [22].

The absence of term restrictions for legislative members in Indonesia's House of Representatives poses significant risks of prolonged influence, corruption, bribery, and inefficiency. This comparative study of legislative rules in the United States, Australia, and Austria highlights the importance of well-defined legislative frameworks to promote accountability and prevent the concentration of influence. Establishing term restrictions for legislative members in Indonesia would ensure the continuous infusion of new perspectives into the legislative process, align with the principles of justice and democratic governance, and enhance the integrity, effectiveness, and legitimacy of the country's democratic system. Implementing such reforms would foster a more dynamic and responsive legislative body, better equipped to address the evolving needs of society, and promote public trust and confidence in the legislative process.

3.2. Reconstruction of Values in Legislative Members' Term Rules Based on the Principle of Justice

Amendments to the 1945 Constitution have significantly influenced the Indonesian government system. The most notable impact is the evaluation of the New Order leadership, specifically the rule that sets term limits for the presidency. Article 7 of the 1945 Constitution stipulates that a president may be re-elected for the same office for one additional term, meaning the presidential term limit is two terms or 10 years [23]. However, a new issue has emerged: the absence of articles in the 1945 Constitution that regulate the term limits for legislative members, as well as in legislation, particularly the Law on the People's Consultative Assembly the House of Representatives, the Regional

Representative Council, and the Regional People's Representative Council [24].

The reasons behind the absence of term limits for House of Representatives of Indonesia's members stem from the House of Representatives of Indonesia's itself. Logically, it is unlikely that individuals would enact measures detrimental to themselves [25]. Therefore, it is improbable that the House of Representatives of Indonesia's or the legislature would create laws that restrict their own influence. Naturally, any rule limiting the terms of legislative members would be disadvantageous to those who wish to run for re-election. As such, the House of Representatives of Indonesia's would likely create rules that are advantageous to themselves [26].

The House of Representatives of Indonesia's role in Indonesia's constitutional system has significantly contributed to the current development of democracy, serving as the people's voice and representatives [27]. Today, there is a growing need to impose term limits on them. Several considerations justify this limitation. Firstly, it concerns the benefit to society. Since the presence of House of Representatives of Indonesia's members has often not been felt by the public, frequent changes in House of Representatives of Indonesia's membership would not have much impact. Additionally, long-serving members have not necessarily gained public affection or prioritized the people's interests; instead, they tend to prioritize the interests of the parties that support them.

Justice, derived from the word "fair," is defined in the Indonesian Dictionary as impartial, unbiased, and

²⁰ Gamper, A. (2006). Republic of Austria. *Legislative, Executive, and Judicial Governance in Federal Countries*, 71-100.

²¹ Kelsen, H. (1942). Judicial review of legislation: a comparative study of the Austrian and the American constitution. *The journal of politics*, 4(2), 183-200.

²² Müller, W. C. (2005). Austria: A complex electoral system with subtle effects. *The politics of electoral systems*, 397-416.

²³ Wartoyo, F. X. (2023). Comparative Study of the Authority of the MPR During the New Order and Reform Order from the Perspective of the Theory of Dignified Justice. *International Journal of Educational Research Excellence (IJERE)*, 2(2), 577-583.

²⁴ Zanibar, Z. Z. (2018). The Indonesian Constitutional System in the Post Amendment of the 1945 Constitution. *Sriwijaya Law Review*, 2(1), 45-55.

²⁵ Malapu, M. Q. (2022). Juridical Analysis of the Office Term of Legislative Members in the Republic of Indonesia. *LEGAL BRIEF*, 11(5), 3366-3371.

²⁶ Purnomo, V. D., Raharjo, S., & Dewi, A. (2023). It is necessary to limit the term of office of the House of Representatives to prevent abuse of authority in Indonesia. *Formosa Journal Of Applied Sciences*, 2(3), 437-452.

²⁷ Ziegenhain, P. (2008). The Indonesian legislature and its impact on democratic consolidation. In *Democratization in Post-Suharto Indonesia* (pp. 53-72). Routledge.

not arbitrary. Fairness primarily means that decisions and actions are based on objective norms [28]. Justice is inherently a relative concept; what is fair to one person may not be fair to another. When someone claims to act justly, it must align with public order where a recognized scale of justice exists. The scale of justice varies from place to place, defined and fully determined by the society according to its public order [29].

The value reconstruction aimed at this study is that the rule of legislative members' terms, which was previously unjust, now becomes just.

3.3. Reconstruction of Norms in Legislative Members' Term Rules Based on the Principle of Justice

The influence to make laws must reside in a designated legislative body to prevent self-serving legislation. In democracies, the legislative body is the highest authority, enshrined in the constitution, which

limits governmental influence and serves as a social contract between the people and the government [30]. Article 7 of the 1945 Constitution limits the president's term to two periods, but there are no similar provisions for legislative members. The absence of term limits for House of Representatives of Indonesia's Regional Representative Council, and House of Representatives of Indonesia's members has led to increased corruption, bribery, collusion, and nepotism. Long-serving members often prioritize party interests over public welfare [31]. Implementing term limits would refresh the legislative body, provide broader opportunities for the public, and reduce corruption, bribery. Although the 2012 Election Law does not impose term limits, internal party bylaws may include them, though they are not legally binding.

Based on the above phenomenon, the following table presents the reconstruction of legislative term rules based on the principle of justice:

Table 2: Reconstruction of Legislative Term Rules Based on Justice Principles

Rule	Weakness	Reconstruction
Law No. 7 of 2017 on General Elections, Article 240, Paragraph 1: Candidates for house of representatives of Indonesia's, Provincial house of representatives of Indonesia's, and Regency/City house of representatives of Indonesia's members must be Indonesian citizens and meet the following requirements: a. At least 21 years old; b. Devout to God Almighty; c. Reside in Indonesia; d. Able to speak, read, and/or write in Indonesian; e. Minimum education of high school, equivalent; f. Loyal to Pancasila, the 1945 Constitution, NKRI, and Bhinneka Tunggal Ika; g. No imprisonment for a crime punishable by at least 5 years, unless openly and honestly disclosed to the public; h. Physically and mentally healthy, free from drug abuse; i. Registered voter; j. Willing to work full-time; k. Resign from positions such as regional head, civil servant, TNI, Police, BUMN, BUMD, or any position funded by the state, with an irrevocable resignation letter; l. Willing not to practice as public accountant, lawyer, notary, or engage in work related to state finances or causing conflicts of interest with their duties; m. Willing not to hold concurrent positions as other state officials, directors, commissioners, or supervisors of BUMN/BUMD; n. Member of a political party; o. Nominated in only one representative body and one electoral district.	No clarity on legislative term limits	Reconstruction of Law No. 7 of 2017 on General Elections Adding point q to Article 240, Paragraph 1: Prospective members must meet existing criteria plus: q. Never served as a member of the council or has served only one term.

²⁸ Hartung, F. E. (1954). Cultural relativity and moral judgments. *Philosophy of Science*, 21(2), 118-126.

²⁹ Fraser, N. (2009). *Scales of justice: Reimagining political space in a globalizing world* (Vol. 31). Columbia University Press.

³⁰ Mukhlis, M. M. (2024, May). The Right To Recall Legislative Members By Political Parties: A

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³¹ Susmayanti, R., & Zain, M. N. R. (2024, January). Loosening Requirements for Parliament Membership: The Meaning of Power in Forming Election Law?. In *12th UUM International Legal Conference 2023 (UUMILC 2023)* (pp. 55-76). Atlantis Press.

Rule	Weakness	Reconstruction
Law No. 7 of 2017 on General Elections, Article 248: 1) The KPU verifies the completeness and correctness of administrative documents House of Representatives of Indonesia's candidates and verifies that at least 30% of candidates are women. 2) The Provincial KPU verifies the completeness and correctness of administrative documents for Provincial House of Representatives of Indonesia's candidates and verifies that at least 30% of candidates are women. 3) The Regency/City KPU verifies the completeness and correctness of administrative documents for Regency/City House of Representatives of Indonesia's candidates and verifies that at least 30% of candidates are women.	Lack of fairness.	Reconstruction of Law No. 7 of 2017 on General Elections Adding Paragraph 4 to Article 248: (4) KPU conducts verification based on the principle of justice.

4. CONCLUSION

The current rule of legislative members' terms is unjust because the absence of term restrictions significantly impacts society. As previously discussed, the lack of term restrictions for legislative members increases the risk of corruption, bribery, collusion, and nepotism. Besides the prevalent corruption, bribery, collusion, and nepotism practices, the lack of term restrictions also negatively affects the quality of legislation produced. The political and legal configuration of the legislative body conflicts with the National Legal Politics. Increased public distrust towards legislators as representatives of the people will hinder Indonesia's progress. The weaknesses from the legal substance aspect include the absence of clear rules on legislative term restrictions, which hinders regeneration and reduces public trust in legislators. In terms of legal structure, Indonesia's legal framework has not yet recognized the urgency of legislative term restrictions, considering the current state of the Indonesian parliament. There has been no significant progress year after year regarding national legislative programs becoming laws, which affects the people. One of the issues stems from long-term legislators who tend to lack innovation and fail to improve the working system. From the legal culture perspective, there is a need for public awareness that legislative term restrictions are crucial. Public involvement is necessary to encourage active participation in legislative roles, ensuring continuous regeneration. The reconstruction of legislative members' term rules based on justice values involves reconstructing both values and norms. The value reconstruction aims to transform previously unjust term rules into just ones. The norm reconstruction involves amending Law No. 7 of 2017 concerning General Elections by adding a clause that stipulates a candidate has never or has only served one term as a legislative member. Additionally, Article 248 should include a new provision that the KPU verifies based on justice values.

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