



## **JURIDICAL REVIEW REGARDING THE CONSTITUTIONALITY OF THE THREE-PERIOD POSITION LIMITS FOR THE PRESIDENT IN THE INDONESIAN LEGAL AND POLITICAL CONTEXT**

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### ***Abstract***

*Indonesia as an independent country, of course, has a constitution as a foundation and guideline in carrying out its constitutional system and government. The existence of issues related to the presidential tenure being 3 periods makes this research aim (1) to review the presidential tenure arrangements in terms of the perspective of the currently valid constitution (ius constitutum), and (2) to find out the idea of construction (ius constituendum ) on the term limits of the president and vice president of the Republic of Indonesia. In this study using the type of normative legal research. The results of this study indicate that (1) the constitutionality of setting limits on the term of office of the president and vice president at present (ius constitutum) which has been regulated in Article 7 of the 1945 Constitution, but the formulation in that article still has several deficiencies so that the idea of legal construction is needed, to be a solution to this deficiency. (2) the term limits for the president and vice president must consider, review and examine the urgency of benefit and justice for the nation and state. Changes related to the president's tenure to 3 periods must also pay attention to other provisions as stipulated in Article 37 of the 1945 Constitution.*

**Kata kunci:**

Konstitusionalitas, *Ius*  
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**Abstrak**

Indonesia sebagai negara merdeka, tentunya memiliki konstitusi sebagai landasan dan pedoman dalam menjalankan sistem ketatanegaraan dan pemerintahannya. Adanya isu terkait dengan masa jabatan presiden menjadi 3 periode menjadikan penelitian ini bertujuan (1) untuk, meninjau terkait pengaturan masa jabatan presiden ditinjau dari perspektif konstitusi yang sedang berlaku saat ini (*ius constitutum*), dan (2) untuk mengetahui gagasan konstruksi (*ius constituendum*) terhadap batasan masa jabatan presiden dan wakil presiden republik Indonesia. Dalam penelitian ini menggunakan jenis penelitian hukum normatif. Hasil dari penelitian ini menunjukkan bahwa (1) konstitusionalitas pengaturan batasan masa jabatan presiden dan wakil presiden di masa sekarang (*ius constitutum*) yang sudah diatur dalam Pasal 7 UUD 1945, namun perumusan dalam Pasal tersebut masih terdapat beberapa kekurangan sehingga diperlukannya gagasan konstruksi hukum, untuk menjadi solusi atas adanya kekurangan tersebut. (2) batasan masa jabatan presiden dan wakil presiden maka harus mempertimbangkan, meninjau dan meneliti, urgensi terhadap kemanfaatan, dan keadilan bagi bangsa dan negara. Perubahan terkait dengan masa jabatan presiden menjadi 3 periode jurga harus memperhatikan ketentuan-ketentuan lainnya yang sebagaimana teruang dalam Pasal 37 UUD 1945.

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**INTRODUCTION**

Indonesia is a country that adheres to a presidential system of government. Based on Article 1 paragraph 1 of the 1945 Constitution, it also confirms that Indonesia is a unitary state in the form of a republic. In line with this, Indonesia, as an independent country, certainly has a constitution as a foundation and guideline in carrying out its government system. The constitution is also the highest law in a nation's constitutional system, specifically for the Indonesian nation itself. The presence of a constitution in a country can describe and reflect the overall laws and regulations that govern that country.

The constitution is a legal construction and/or legal framework for carrying out political life in a country. Every country definitely wants a constitutional state

life. A constitutional government has characteristics including expanding political participation, giving legislative power to the people, and rejecting authoritarian government and so on. (Nasution, 1995 : 16).

The 1945 Constitution of the Republic of Indonesia is the constitution and highest law in Indonesia. In the history and progress of the 1945 Constitution, it has undergone amendments and changes 4 (four) times. The emergence of amendments to the 1945 Constitution was a manifestation of political reform and constitutional reform that was carried out democratically. In the current modern constitutional system, there are 2 (two) constitutional amendment systems, namely the renewal system and the amendment system. The difference between the two systems lies in constitutional renewal, where in the renewal system, the renewal is carried out in its entirety or creating and designing a completely new constitution, whereas in the amendment system, constitutional renewal and changes are carried out while still enforcing the original constitution. Referring to Article 37 of the 1945 Constitution, it regulates the authority of the People's Consultative Assembly to make changes (amendments) to the 1945 Constitution.

Theoretically, a constitution can be changed in order to improve legislative regulations. Initially, regulations regarding the terms of office of the president and vice president had previously been regulated in Article 7 of the 1945 Constitution, but these regulations were deemed not to have included regulations regarding term limits for the president and vice president in Indonesia. Continuous term limits and terms of office for the president and vice president without replacement will cause leadership regeneration to be hampered, apart from that it will also have the potential for abuse. (Soemantri, 2015 : 184) For this reason, various views and ideas have emerged that urge changes to Article 7 of the 1945 Constitution.

In relation to the mechanism of the process and changes to the amendment arrangements for a constitution regarding the term of office and term of office of the president and vice president, this is a material content contained in the constitution itself, so that it can be seen that there is a relationship between the terms of office of the president and vice president and constitution. More than that, referring to the constitution in force at that time, it can be studied that the constitutionality of a rule contains, namely its conformity with the constitutional system in terms of whether or not the rule is contained in the constitution.

The amendment to Article 7 of the 1945 Constitution explains that the term of office of the president and vice president is limited to two terms. This is done to avoid authoritarian power. However, in reality, the formulation in this article still contains shortcomings, namely that this article contains a formulation that will provide opportunities to be translated and interpreted differently from the original formulation in the article. Referring to the formulation in Article 7 of the 1945 Constitution, regarding the limits relating to the terms of office of the president and vice president, it specifically states that they must be carried out continuously or

not, the most important thing is when the term of office for the two terms has expired or expired, then to forever in the same position cannot serve again.

Looking at the existing conditions since the beginning of 2023, the Indonesian people are starting to face the preparation period for the presidential and vice presidential elections (2024 presidential election). Various preparations have been made, such as political parties and the general public competing with each other to nominate presidential and vice presidential candidates, whom they will support in the political contest to become presidential and vice presidential candidates for the 2024-2028 period. In the current political contestation, one discourse has emerged which is very interesting for the public to discuss, namely renominating Joko Widodo to become president of the Republic of Indonesia for the third term. This issue and discourse has reaped many pros and cons, many want Jokowi to become president again, because his work program is considered good to continue, but on the other hand, this has reaped cons because it is considered disobedient and subservient to the existing constitution.

In connection with the debate regarding the promotion and candidacy of Jokowi for the third time, the problems related to limiting the term of office of the president and vice president are increasingly complex. The constitutionality of term limits for the president and vice president is not only a current issue and problem, but also the constitutionality of the provisions on term limits as one of the conditions for registering candidates for president and vice president of the Republic of Indonesia. Therefore, in the research entitled "Judicial Review Regarding the Constitutionality of 3 Period Presidential Limits in the Indonesian Political and Legal Context".

## **FORMULATION OF THE PROBLEM**

Based on the description of the background of the problem above, a problem formulation can be formulated in this research, such as: *First*, How the presidential term of office is regulated from the perspective of the current constitution. currently valid (*ius constitutum*) ? *Second*, how is the idea of construction (*ius constituendum*) related to the constitutionality of term limits for the president and vice president of the Republic of Indonesia?

## **RESEARCH METHODS**

This research is normative juridical legal research. In this research, three types of approaches are used, namely, the Statute Approach, explaining the review of the comprehensive document on amendments to the 1945 Constitution, which is contained in Article 7 of the 1945 Constitution. The Historical Approach, will examine from a historical point of view the constitutional arrangements for the terms of office of the president and vice president. The conceptual approach is carried out by analyzing several doctrines and theories regarding ideal term limits

for the president and vice president in order to obtain a clear legal construction (Marzuki, 2019 : 133)

The legal materials used in this research, namely primary and secondary legal materials obtained from library/literature studies, were then studied and analyzed for their relationships and interrelationships in helping and explaining the concepts and theories used in this research.

## **RESULTS AND DISCUSSION**

### **Regulation of the President's Term of Office Viewed from the Perspective of the Constitution Currently in Force (*ius constitutum*)**

Examining the 1945 Constitution, which is stated in Article 7 of the 1945 Constitution, regulates the terms and conditions for term limits for the president and vice president in Indonesia. Looking at the formulation of Article 7 of the 1945 Constitution provides an explanation that the formulation of this article does not specifically regulate the term of office of the president (period), but does not provide clear and concrete limits regarding the term limits of the president and vice president in Indonesia. Apart from that, there is an article that states that the term of office of the president is very wide open to interpretation, so that there is a chance that a president can carry out his office continuously (Ghoffar, 2009 : 3). However, in its implementation and application, this arrangement has given rise to various kinds of translations and deviations, but in fact there are regulations related to the term of office of the president and vice president which are contained in the 1945 Constitution which shows the identity of the government system and constitutional system adopted by the Indonesian state.

After the 1945 Constitution, it was declared that the position and role of the president of the Republic of Indonesia was very dominant in various fields of life. Even during the New Order, whether a person could assume the position of president was very dependent on the MPR as the highest state institution at that time, so that there was no limit to the term of office of the president, as long as he was still trusted and elected by the People's Consultative Assembly, he would be able to continue serving as president and vice President.

In the formulation following the amendment regarding the terms of office of the president and vice president, it is more explicitly explained that the president and vice president can hold office for a maximum of five years and after that can be re-elected in the same position, only for one term of office. This change is the right step for the start of new reforms.

The development of regulations regarding the term of office of the president and vice president must of course be in line with developments and changes to the existing constitution in Indonesia (Santoso, 2013 : 121). Referring to the regulations currently in force in the Indonesian constitution (*ius constitutum*), it can be seen that the limitations on the constitutionality of the terms of office of the president

and vice president in Indonesia have been determined in Article 7 of the 1945 Constitution of the Republic of Indonesia. Regulations regarding the term of office of the president and vice president The president, if viewed from the perspective of the laws or regulations currently in force, experiences various dimensions, this cannot be separated from politics and law.

The discourse on a three-term presidential term has particularly received public attention, as it can provide a space for debate for the public, reflecting that all citizens want to create harmony between the constitution and those holding power, in this case politicians. The issue of the presidential term being 3 terms, is deemed necessary to also be criticized in terms of the substance of the issues that occurred. Inconsistency in consensus is a criticism that needs to be leveled. From various points of view and ideas regarding the presidential term of office, it is divided into three terms, which are aimed at ensuring that development is equitable and national development can run well, and in accordance with the program that has been designed in the outline of state policy. Therefore, even though this issue aims to ensure that national progress and development can be carried out evenly, on the other hand, it is feared that this discourse will lead to authoritarian power and abuse of power that is related to political interests.

### **The Idea of Construction (*Ius Constituendum*) is Related to The Constitutionality of the Terms of Office of The President and Vice President of The Republic of Indonesia**

The idea of constructing the provisions contained in the Law, specifically to avoid various interpretations in the formulation of the previous Article, namely in Article 7 of the Law of the Republic of Indonesia of 1945, also requires the existence of a "Grand Design" in the legal system that is envisioned. aspire (*ius constituendum*). This amendment is another urgency that is closely related to the political and legal realms related to the provisions on term limits for the president and vice president. There is a political element that is closely related to this provision, so it cannot be denied that it will open up the possibility for this regulation to be misused by irresponsible authorities who want to use their power for their personal and political interests.

As explained previously, this is related to the provisions of Article 7 of the 1945 Constitution resulting from an amendment which clearly states that the term of office of the president is a maximum of five years and that in the same position he can be re-elected for only one term. So it can be interpreted that the presidential term of office can only be two terms. However, what is currently causing controversy is that the regulations do not clearly and in detail state whether this period can be carried out continuously or not.

Since the period before the New Order, up to the reform period, the 1945 Constitution has undergone changes or amendments four times. For this reason, it is unavoidable and may happen that changes or fifth amendments will occur in the future, and in fact these drafts or plans are already busy and widely discussed among the public and are currently being discussed by the People's Consultative Assembly. Regarding presidential term limits, this is of course an important point that must be studied, researched and considered, bearing in mind that the constitution in Indonesia is the highest legal basis for regulating the constitutional system of the Republic of Indonesia.

Regarding the views and ideas of construction (*ius constituendum*) regarding how ideal the regulations related to presidential term limits should be, previously there must be a review of the sound of the Article that regulates this matter, this is very related and influences the legal rules that will be aspired to. say. The formulation of the new article must be unequivocal and grammatically using language patterns that are systematically arranged so that it will be easier to understand and reduce the possibility of being misinterpreted or misinterpreted. Apart from that, if you want to create an idea for a new legal construction, it is best that the formulation in the article of the law must avoid word ambiguity which will give rise to new polemics regarding different interpretations and meanings of the sound of the article.

It also needs to be noted that the idea of legal construction and design of new rules does not only talk about changes in the wording, meaning and sound of an article, but more than that, the idea of legal construction must compare the existing rules with the rules that will be made. and/or articles that are specific and related to the problem that occurred. Presidential term limits do not only make changes to Article 7 of the 1945 Constitution but must also pay attention to changes to the formulation in Article 169 letter n of Law Number 7 of 2017. In this regard, the idea of constitutional construction of term of office and conditions for presidential and vice presidential candidacy This is an inseparable unit.

Thus, there is an idea of construction and ideal leadership of the Indonesian nation which is determined and adapted to the constitution as the highest legal basis and guideline. Therefore, the existence of discourse related to the terms of office of the president and vice president of the Republic of Indonesia is certainly a new perspective and reform for the Indonesian people, but this needs to be studied more deeply, so that in making these decisions it can provide real benefits and justice.

The 1945 Constitution is evidence of the results of consensus in the agenda and plans for reform, so it can be said that the existence of the constitution is a resultant, in carrying out the idea of legal construction. The constitution is indeed the highest legal guideline and basis, but on the other hand, a constitution must always follow developments over time and movements of the constitutional system in which the constitution applies and exists. Thus, the current constitution provides

illustrations and examples related to the needs of the nation and state, so it must be carefully considered regarding whether or not an amendment is necessary. In this regard, it is the duty and obligation of all aspects of citizens, both from policy makers, that it is necessary to ensure that in amending the constitution, it must remain on democratic lines and remain subject to the previous constitution by prioritizing substantive provisions, namely, so that The ideals of the Indonesian nation can be realized and achieved in the next ideal leadership.

## **CLOSING**

### **Conclusion**

Based on the results and discussions that have been discussed, the following conclusions can be drawn:

1. Examining thoughts in the form of ideal ideas for legal construction contained in the Indonesian constitution, relating to limiting the presidential term of office to 3 terms, it is possible to accommodate this through changes and/or amendments to the 1945 Constitution, but must pay attention to several things, such as setting constitutional limits on the presidential term of office and The current vice president (*ius constitutum*) has been regulated and contained in Article 7 of the 1945 Constitution, however the formulation in this article still has several shortcomings so that legal construction ideas are needed, to be able to provide solutions to these shortcomings.
2. Apart from that, if you are referring to the idea of legal construction in this case (*ius constituendum*) related to constitutionality limits on the terms of office of the president and vice president, then you must consider, study and research the urgency of the benefits and justice for the nation and state. Changes related to the presidential term of office to 3 terms must also take into account and take into account certain conditions as stated in Article 37 of the Constitution of the Republic of Indonesia.

### **Recommendation**

The recommendations expected from this research are:

1. The regulation of constitutional limits on the term of office of the president and vice president in the present (*ius constitutum*) has been regulated and contained in Article 7 of the 1945 Constitution, however the formulation in this article still has several shortcomings so that the government must discuss the need for legal construction ideas, to be able to provide solution to these deficiencies.
2. The government, in this case the legislators, must really consider, study and research the urgency of the benefits and justice for the nation and state. Changes related to the presidential term of office to 3 terms must also take into account and take into account certain conditions as stated in Article 37 of the Constitution of the Republic of Indonesia.



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