

Three-Term Presidency: The Perspectives from Democracy and *Maslahah Mursalah*

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Abstract

The presidential and vice-presidential elections on February 14, 2024, raised a significant issue: the debate over the three-term presidency, which sparked considerable controversy among the public. This study examines the concept of the three-term presidency from the perspectives of democracy and *Maslahah Mursalah*. This research employs normative legal research with a descriptive approach, utilizing qualitative methods. The study focuses on Article 7 of the 1945 Constitution, analyzing it from the viewpoint of democracy. Furthermore, the Islamic legal analysis is analyzed with *Maslahah Mursalah*. The findings of this study indicate that the limitation of the presidential term to two periods, as stipulated in Article 7 of the 1945 Constitution, is beneficial and does not threaten democracy. Furthermore, from the perspective of *Maslahah Mursalah*, the analysis of benefits (*maslahah*) and harms (*mafsadah*) suggests that extending the presidential term to three periods would result in greater harm than benefit. Thereby, rendering it inadvisable and potentially threatening to public welfare.

Keywords: Democracy; Three-Term Presidency; *Maslahah Mursalah*; Constitution



Introduction

The 1945 Constitution, Article 1, Paragraph (1) affirms that Indonesia is a unitary state in the form of a republic. Indonesia adopts a presidential government system, wherein the president is elected through a general election, with a maximum term of two periods.¹ The 1945 Constitution grants the presidency a strong institutional position, with the president of Indonesia serving as both the head of state and the head of government.² In line with the political aspirations of the 1998 reform movement, the 1945 Constitution was amended four times between 1999 and 2002.³ Consequently, the state found it necessary to impose limitations to prevent abuses of power. One such restriction is the limitation on the presidential and vice-presidential terms.⁴

As stipulated in Article 7 of the 1945 Constitution, the term limits for the president and vice president were not initially accompanied by a clear delineation of term limits. As a result, in practice, it allowed the same president to be repeatedly re-elected, bypassing the system of power limitation, a fundamental principle of the state as enshrined in the constitution (constitutionalism). For instance, President Soekarno and President Soeharto extended beyond two consecutive terms. This continuous leadership not only hinders the regeneration of leadership but also poses a potential risk of power being abused.⁵

¹ Taufiq Yuli Purnama dan Ramalina Ranaivo Mikea Manitra, "The Proposal for the Implementation of Elections in Indonesia: A Framework Based on the Presidential System," *Wacana Hukum* 29, no. 2 (31 October 2023): 181–205, <https://doi.org/10.33061/wh.v29i2.9815>.

² Saldi Isra, Fahmi Idris, dan Hilaire Tegnan, "Designing a Constitutional Presidential Democracy in Indonesia," *Journal of Politics and Law* 13 (2020): 22.

³ Zen Zen Zanibar, "The Indonesian Constitutional System in the Post Amendment of the 1945 Constitution," *Sriwijaya Law Review* 2, no. 1 (31 Januari 2018): 45–55, <https://doi.org/10.28946/slrev.Vol2.Iss1.109.pp45-55>; Abdurrachman Satrio, "Restoring Indonesia's (Un)Constitutional Constitution: Soepomo's Authoritarian Constitution," *German Law Journal* 24, no. 2 (Maret 2023): 402–16, <https://doi.org/10.1017/glj.2023.16>.

⁴ Elsan Yudhistira, "Pembatasan Masa Jabatan Presiden Sebagai Upaya Menghindari Terjadinya Abuse of Power," *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 2 (20 Oktober 2020): 132–54, <https://doi.org/10.56087/aijih.v23i2.43>.

⁵ Juang Intan Pratiwi, Neneng Salama, dan Siti Ulfah, "Pembatasan Masa Jabatan Presiden Di Indonesia," *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3, no. 1 (2021): 18–26, <https://doi.org/10.52005/rechten.v3i1.23>.

On Tuesday, October 19, 1999, the People's Consultative Assembly of the Republic of Indonesia decided to limit the presidential term, which was previously indefinite, to a maximum of two terms. The presidential term was made more definitive, with each term lasting five years, and a strict limit of two terms was established.⁶

Several previous studies have addressed the issue of presidential term limits. For instance, Natashya's research concluded that the concept of a three-term presidency from the perspective of constitutional law is inconsistent with the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and, according to constitutional law and political experts, poses a significant risk of power abuse.⁷

Aulia Oktarizka Vivi Puspita Sari revealed in her article that, normatively, the organization of general elections and the limitation of the presidential term to two periods is a constitutional obligation that must not be violated. This limitation ensures equal opportunities for individuals to participate in governance. The two-term presidential limit is part of maintaining Indonesia as a democratic state, where such restrictions are universally accepted in the practice of human rights and are not considered a violation of human rights. As a consensus that has been unanimously agreed upon, the two-term presidential limit brings several consequences. Conversely, those unwilling to uphold and safeguard this consensus are no longer in agreement with the consensus established by the Indonesian nation, which was designed to prevent the occurrence of tyranny.⁸

Riska, in her article, found that the extension of the presidential term can occur if there is a constitutional amendment or a revision of the 1945 Constitution to create a fifth constitution, specifically in Article 7 of the 1945 Constitution. By

⁶ Dian Aries Mujiburohman, *PENGISIAN JABATAN PRESIDEN PASCA AMANDEMEN UUD 1945* (Yogyakarta: Intan Media, 2012).

⁷ Natashya, Laurencia Cindy, dan Rasji, "Perspektif Hukum Tata Negara terhadap Pemikiran Jabatan Presiden Tiga Periode Ditakutkan Menjadi Penyalahgunaan Wewenang," *INNOVATIVE: Journal Of Social Science Research* 3, no. 3 (2023): 2832–45.

⁸ Aulia Oktarizka Vivi Puspita Sari A.P, Indah Satria, dan Angga Alfian, "the President'S Term of Office Is Three Period in the Implementation of the Government System in Indonesia," *Constitutional Law Society* 2, no. 2 (2023): 167–77, <https://doi.org/10.36448/cls.v2i2.56>.

comparing the presidential terms of Indonesia with those of other countries that adopt a presidential system, it can be observed that the presidential term should not exceed two periods unless a constitutional amendment is made to prevent the misuse of power or abuse of power.⁹

This research distinguishes itself from previous studies by attempting to explore the possibility of enforcing a three-term presidential limit in Indonesia by considering the existing laws from the perspectives of democratic systems and the Islamic legal principle of *Maslahah Mursalah*. Based on the above explanations, this study applies a three-term presidential limit from the perspectives of democracy and *Maslahah Mursalah*.

Research Method

This study is normative legal research with a descriptive approach utilizing qualitative methods. The research focuses on Article 7 of the 1945 Constitution, analyzed through the viewpoint of democracy. Furthermore, the Islamic legal analysis is analyzed using *Maslahah Mursalah*. The data used in this study is secondary data obtained from literature relevant to the issues being examined. The data sources are secondary sources, comprising primary, secondary, and tertiary legal materials. The data collecting technique employed is a document or literature study.

Presidential Terms Before and After the Amendments to the 1945 Constitution

Article 7 of the 1945 Constitution states that the president and vice president serve for five years and may be re-elected to the same office only for

⁹ Riska, "Inkonstitusionalitas Masa Jabatan Presiden Selama Tiga Periode, Ditinjau Dari Sudut Pandang Konstitusi," *Jurnal Nalar Keadilan* 2, no. 1 (2022): 48–60.

one additional term.¹⁰ Examining the limits of the presidential term can teach us from past experiences. Presidential terms during the Old Order and New Order eras in Indonesia, as well as on a global scale, such as the presidency of the United States, have often been interpreted differently due to regulations that require further interpretation.¹¹

The president of the Republic of Indonesia also emphasizes his term in Article 7 of the 1945 Constitution, which specifies that the term of office for the president and vice president is five years. After that, they may be re-elected to the same office. This provision indicates that constitutionally, the president and vice president can serve a maximum of two terms (10 years).

Table 1
List of Presidential Terms in Indonesia¹²

No.	Name of President	Duration in Office	Years in Office
1.	Sukarno	22 years	1945- 1967
2.	Suharto	31 years	1967- 1998
3.	BJ Habibie	1 year	1998- 1999
4.	Abdulrahman Wahid	2 years	1999- 2001
5.	Megawati Soekarno Putri	2 years	2001- 2004
6.	Susilo Bambang Yudhoyono	10 years	2004-2014
7.	Joko Widodo	10 years	2014-2024

Source: Retrieved from www.cnbcindonesia.com

¹⁰ Yuniar Riza Hakiki, "Kontekstualisasi Prinsip Kekuasaan sebagai Amanah dalam Pertanggungjawaban Presiden dan Wakil Presiden Republik Indonesia," *As-Siyasi: Journal of Constitutional Law* 2, no. 1 (2022): 1–20, <https://doi.org/10.24042/as-siyasi.v2i1.11813>.

¹¹ Mahkamah Konstitusi, "Ringkasan Permohonan Perkara Nomor 22/PUU-XV/2017," *Mkri.Id*, no. 1 (2017): 1–5.

¹² CNBC Indonesia Sef, "Ini Urutan Presiden Indonesia serta Wakil dan Masa Jabatannya," *CNBC Indonesia*, 2023.

Historically, the rules governing the terms of office for the president and vice president have undergone several changes. Initially, the term was limited to five years per term, with the possibility of re-election. However, in 1963, the Provisional People's Consultative Assembly (MPRS) issued Decree Number III/MPRS/1963, which appointed Indonesia's great revolution leader, Soekarno, as president for life. The decree stated that Soekarno met the requirements to be President based on the revolution, the 1945 Constitution, and Islamic perspectives. The MPRS regarded Soekarno embodied the combination of a revolutionary leader and a national leader. Moreover, he was considered the unifier of all revolutionary people's forces.¹³

After the Old Order period ended, the rules for the president and vice president's terms reverted to the mandate of Article 7 of the 1945 Constitution. However, this article needed to limit how long a president could serve, allowing the president to serve more than two terms. Before the amendments, the original text of Article 7 of the 1945 Constitution stated, "The president and vice president shall hold office for five years and may be re-elected." This provision was one of the factors that allowed Soeharto's administration to last for 32 years. During the reform era, several regulations were overhauled. In 1999, the People's Consultative Assembly (MPR) amended Article 7 of the 1945 Constitution. Since the reform era, the government has amended the 1945 Constitution four times. The text of Article 7 of the 1945 Constitution after the first amendment reads, "The president and vice president shall hold office for five years and may be re-elected to the same office only for one additional term."¹⁴

Review of Presidential Terms from a Democratic Perspective

As stipulated in Chapter III of the 1945 Constitution of the Republic of Indonesia, Article 7, concerning the powers of government, the president and vice

¹³ Universitas Islam, Negeri Sultan, dan Syarif Kasim, "TAP MPRS III / 1963 TENTANG Kepemimpinan Dalam Sistem Politik Indonesia Pada Masa Demokrasi," 2021.

¹⁴ Kristina, "Pasal 7 UUD 1945 tentang Masa Jabatan Presiden dan Wapres, Bisakah 3 Periode?," 2021.

president serve for five years and may be re-elected to the same office. Article 7 of the 1945 Constitution, which addresses the limitation of the presidential term, has several key objectives related to democracy, political stability, and good governance.

Democracy etymologically originates from the Greek word *demos*, meaning people, and *kratos*, meaning power or authority. Democracy signifies the rule of the people or government by the people.¹⁵ According to Jimly Asshiddiqie, democracy is a concept that demands power derived from the people, by the people, and for the people. In its participatory sense, democracy is the power held by the people, for the people, and exercised by the people.¹⁶ In other words, power is recognized as originating from the people; therefore, it is the people who determine and set the direction and governance of the state. One of the prerequisites for establishing a state as a democratic state is the holding of general elections. The form of democracy associated with general elections was first fully experienced by the Indonesian people during the 2004 presidential and vice-presidential elections.

The terms of office for the president and vice president are regulated by Article 7 of the 1945 Constitution. Over time, the length of the presidential and vice-presidential terms has undergone several changes. The original rule limited the term to five years per term, with the possibility of re-election. In 1963, the Provisional People's Consultative Assembly (MPRS) issued Decree No. III/MPRS/1963, appointing Indonesia's great revolution leader, Soekarno, as president for life. This action became a significant rule during the Old Order era.¹⁷

The terms of office for the president and vice president are a function of political policy; thus, following the democratic principles of the state, the terms are adjusted to the duration prescribed by the 1945 Constitution, making it

¹⁵ Dani Amran Hakim dan M. Yasin al Arif, "Questioning Presidential Threshold in Indonesia: Constitutional Analysis and Democracy Implementation," *Veteran Law Review* 7, no. 1 (31 Mei 2024): 73–86, <https://doi.org/10.35586/velrev.v7i1.7591>.

¹⁶ Jimly Asshiddiqie, "Hukum Tata Negara dan Pilar-Pilar Demokrasi," *Serpihan Pemikiran Hukum, Media dan HAM* 2, no. 1 (2009): 478–82.

¹⁷ Juang Intan Pratiwi, Neneng Salama, dan Siti Ulfah, "Pembatasan Masa Jabatan Presiden Di Indonesia."

impossible to establish a retirement age. The five-year terms of the president and vice president are carried out through a universal suffrage system as holders of civil political rights. After the Old Order ended, the terms of the president and vice president reverted to the mandate of Article 7 of the 1945 Constitution. However, this article did not limit the number of terms a president could serve, allowing for the possibility of more than two terms.

The following is the text of Article 7 of the 1945 Constitution before the amendments, as quoted from the official website of the People's Consultative Assembly: "The president and vice president shall hold office for five years, after which they are eligible to be re-elected." This article was one of the reasons for Soeharto's 32-year presidency. At the onset of the reform era, several regulations were reformed. In 1999, the People's Consultative Assembly (MPR) amended Article 7 of the 1945 Constitution. Since the reform era, the government has made four amendments to the 1945 Constitution.

The text of Article 7 of the 1945 Constitution after the amendment reads, "The president and vice president shall hold office for five years, and may be re-elected to the same office only for one additional term."¹⁸ Further changes are reflected in Article 7A, which states, "The president and/or vice president may be dismissed during their term by the People's Consultative Assembly on the proposal of the People's Representative Council, either if proven to have committed legal violations, such as treason against the state, corruption, bribery, other serious criminal offenses, or disgraceful acts, or if they are found to no longer meet the requirements to be president and/or vice president."¹⁹

A public discourse that emerged before the 2024 general election suggested that Joko Widodo and Ma'ruf Amin would extend their terms as president and vice president of Indonesia to three terms. However, President Jokowi stated in the media in October 2022 that he had no intention of extending his term. He

¹⁸ Isin Engin F. dkk., "Undang-Undang Dasar Negara Revoblik Indonesia Tahun 1945," *Mahkamah Konstitusi*, 2002, 1–36.

¹⁹ Isin Engin F. dkk.

stated that Indonesia is currently focused on resolving the pandemic issue and requested that no new disturbances be introduced.²⁰

The current presidential term is governed by Article 7 of the 1945 Constitution as amended, which affirms that the president's term is five (5) years and may be re-elected to the same office for only one additional term. The term limits for the presidency have evolved from the Old Order, New Order, and during the reform era, including before and after the amendments to the 1945 Constitution. Therefore, future changes to the rules concerning the presidential term are still possible.

However, if changes to the presidential term are considered in the current era (particularly during Jokowi's second term), ongoing development work still needs to be completed. If the term ends and a new leader must take over, potentially leading to policy changes, discontinuity could hinder national development. From the perspective of democracy, as per Abraham Lincoln's views, extending the presidential term to three periods raises several concerns:

a. Abuse of Power

There is a risk of power abuse, similar to the Old and New Order eras in Indonesia when the president held absolute power and enacted policies favoring certain political interests.

b. Centralization of Power

Extending the term could result in the concentration of power in a single individual, reducing opportunities for leadership changes that could bring innovation, fairness, honesty, and trustworthiness.

c. Authoritarianism

Extending the presidential term to three periods might enable a president to solidify an authoritarian position, which contradicts democratic values and freedoms.

²⁰ Ismazem Emshaliha, "Gagasan Perpanjangan Masa Jabatan Presiden 3 Periode Dihubungkan Dengan UUD Tahun 1945," *Jurnal Pemandhu* 3, no. 1 (2022): 141–53.

Implementing electoral laws that place political parties as the screening ground for leaders in a direct democracy system logically implies that, in a presidential system, political parties significantly influence presidential policies. In this context, if a party desires a president to serve for three periods, it would be unfounded and unconstitutional. However, if the desire to extend President Jokowi's leadership for three periods aligns with constitutional pathways, it could be pursued constitutionally.²¹

If a president were allowed to serve three terms, it could threaten the future of the Indonesian constitution. It might occur if the leader manipulates the constitution or the political system to extend their rule, thereby threatening the stability and legitimacy of democracy in Indonesia. Therefore, following Article 7 of the 1945 Constitution, maintaining the presidential term limit to two periods is advisable and does not threaten democracy.

In democracy, power refers to an individual's political role, which must be exercised broadly and appropriately. In a democratic system, power is not a gift or inheritance but a process in which all elements compete, including political parties, the government, election organizers, universities, NGOs, mass organizations, and the general public.

Indonesia has embraced this democratic system from the beginning, although in practice, there have been many weaknesses and even contradictions to the values of democracy itself. Indonesian democracy reflects the personality and philosophy of Pancasila rather than being transplanted or copied. The Indonesian government operates on a presidential system, where the president is the head of state. The people directly elect the president through elections every five years. No one system of government is universally superior to those adopted by different countries. Similarly, understanding Indonesia's journey is crucial for the nation to align with its goals and ideals to be always in the spirit of Pancasila and democracy.

²¹ Muhamad Aljebra Aliksan Rauf dan Rudini Hasyim Rado, "Menakar Peluang Masa Jabatan Presiden 3 Periode Dalam Konfigurasi Politik Hukum," *Al-Adalah: Jurnal Hukum dan Politik Islam* 7, no. 1 (2022): 32–50, <https://doi.org/10.35673/ajmpi.v7i1.2054>.

The Application of the Three-Term Presidential Mandate from the Perspective of *Maslahah Mursalah*

Al-Maşlahah Al-Mursalah refers to the public interest that aligns with the objectives of Islamic law, recognized generally without specific textual evidence. This concept is also known as *al-istidlāl al-mursal* or *al-maşāliḥ al-mursalah*.²² Human welfare interests continually evolve and are never static. In contemporary issues where specific legal rulings are absent while societal dynamics progress, many aspects of human welfare remain unaddressed by legal texts. This should be avoided because the purpose of Islamic law is to achieve human welfare.

In the historical review of the legislative processes during the time of the companions (*Sahabah*), the *Tabi'in* (followers) and the imams of Islamic law (*Fiqh*) frequently issued legal rulings to achieve public welfare even in the absence of explicit textual evidence.²³

Table.2

Benefits and Drawbacks of the Three-Term Presidential Mandate

Benefits	Drawbacks
Political and governmental stability	Abuse of power
Experienced leadership	Limiting leadership succession
Continuation of ongoing government programs.	Undermining the democratic system
	Violating the principles of justice and legal certainty

Source: Compiled by the authors

²² Z Abidin, M Bakri, dan M Yasin, “Konsep Al-Maslahah Al-Mursalah Dalam Mengangkat Kepala Negara (Analisis Komparasi Sistem Syura dan Demokrasi),” *ULIL ALBAB: Jurnal Ilmiah ...* 1, no. 5 (2022): 1279–1302.

²³ Jamal Ma'mur Asmani, “‘Fiqh Sosial Kiai Sahal sebagai Fiqh Peradaban’, Wahana Akademika,” *Vol 17 No 02*, no. 2 (2015).

The benefits of adopting the three-term system for the presidency may include enhanced political and governmental stability. It can be considered a *maslahah* if policies and programs implemented in the previous administration (the second term) have proven effective in improving societal welfare. Political and governmental stability is seen as beneficial because it ensures policy continuity, potentially preventing adverse changes resulting from new leadership.

Another benefit of the three-term system is having a leader with proven experience and credibility. Re-election in this scenario would indicate that the leader has successfully contributed to society's welfare.

However, discussing the benefits of the three-term leadership system also brings up potential drawbacks. One significant risk is the potential for abuse of power. Extending the presidential term could lead to neglect of public aspirations and prioritization of political interests.

The drawbacks related to the restriction on leadership succession can impede the regeneration of new leadership. It could lead to a monopoly of power and reduced public participation.

The three-term presidency could undermine the democratic system. Legitimacy in a democratic system comes from the people. In the context of *maslahah mursalah*, any government's primary goal is the people's welfare and interests. Reflecting on the past, public interests were often sidelined during the Old Order and New Order regimes. Implementing the three-term presidency could pose a threat to public welfare.

According to *maslahah mursalah*, the principle of justice must be upheld. If the three-term system is not implemented with fairness, it could erode public trust. Additionally, to apply the three-term system, the process must be based on an accountable and transparent legal system to avoid uncertainty in governance. The implementation of the three-term presidency should carefully balance the benefits and drawbacks. It warrants consideration if it is deemed that this system can bring the country and its people prosperity while avoiding harm.

Conclusion

Based on the analysis, the term of office for Indonesia's president and vice president is limited to a maximum of two terms. According to Article 7 of the 1945 Constitution, the term of office for the president and vice president is five years per term, totaling a maximum of ten years. Exceeding this limit would be considered a deviation from the Constitution. Extending the term beyond two terms would potentially constitute an abuse of power and a violation of existing laws and norms. Suppose there is a push to extend the term. In that case, it must involve a legitimate amendment to the existing laws, accompanied by effective public communication to prevent the recurrence of disturbances or instability experienced in the past.

Authors' Contributions

R.R. initiated the article, oversaw the literature review, collected preliminary data, selected the methodology, and created the initial draft. W.Y.F. played a substantial role by gathering additional data to strengthen the argument, contributing to data analysis, and interpreting the results. Both authors collaborated in reviewing and providing comments to refine the manuscript into its final draft.

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