

Presidential Term Limits, Constitutional Justice, and Eternity Clauses: Preventing Unconstitutional Constitutional Amendments in Indonesia

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Abstract

Article History:

Submitted:

08-12-2025

Received:

04-01-2026

Accepted:

30-01-2026

Keywords:

presidential term
limits; eternity clauses;
unconstitutional
constitutional
amendment;
Indonesia

Constitutional justice functions as a substantive mechanism to uphold constitutional supremacy, limit state power, and protect fundamental democratic values. In presidential systems, one of its most critical institutional expressions is the regulation of presidential term limits, which aims to prevent the concentration of executive authority and to ensure democratic leadership rotation. This article examines the relationship between presidential term limits, constitutional justice, and the doctrine of eternity clauses as a means of preventing unconstitutional constitutional amendments in Indonesia. The study aims to assess whether presidential term limits should be constitutionally entrenched as unamendable provisions in order to safeguard Indonesia's post-authoritarian constitutional order. Employing normative legal research, this study applies conceptual and statutory approaches by analyzing constitutional theory, comparative constitutional practices, constitutional court decisions, and Indonesian constitutional provisions, particularly the 1945 Constitution and its amendments. The findings demonstrate that presidential term limits are frequently targeted through formally valid constitutional amendments that substantively erode democratic principles, illustrating the paradox of unconstitutional constitutional amendments. Comparative experiences from Latin America, Africa, and Europe reveal that the removal or extension of term limits systematically reinforces incumbency advantages and weakens checks and balances. In the Indonesian context, debates surrounding the possibility of extending presidential terms highlight the vulnerability of constitutional safeguards when amendment procedures are dominated by political majorities. This article argues that designating presidential term limits as an eternity clause—or at minimum treating them as a substantive constitutional principle subject to strict judicial protection—is essential to preserving constitutional justice. Such entrenchment would reinforce Indonesia's constitutional identity, prevent the abuse of amendment powers, and ensure that constitutional change remains aligned with democratic accountability and the rule of law.

1. Introduction

Constitutional justice is understood as a mechanism for enforcing the supremacy of the constitution that is oriented toward the protection of fundamental values and citizens' constitutional rights. According to Anca and Narcisa, constitutional justice positions the constitution not merely as the highest legal norm, but as a source of substantive justice that binds all state actions. In this perspective, the existence of constitutional adjudication serves as a necessary condition for the constitution to have effective normative force.¹ Without

¹ Anca-Florina Moroşteş and Narcisa-Mihaela Stoicu, "Constitutional Justice," *Journal of Legal Studies* 19, no. 33 (June 1, 2017): 135–42, doi:10.1515/jles-2017-0010.

constitutional justice, the constitution risks being reduced to a political document lacking real capacity to restrain power or to safeguard constitutional rights, particularly in situations where legislative and executive authority is dominated by political majorities.² The normative dimension of constitutional justice is further articulated by T.R.S. Allan, who argues that law and justice are inherently interconnected. Allan maintains that in a constitutional state, justice finds its highest expression in constitutional values, and therefore the enforcement of law must be directed toward the realization of constitutional justice.³ This understanding is consistent with the position of the Venice Commission, which regards constitutional justice as a fundamental pillar of democracy, the rule of law, and the protection of human rights.⁴ From this standpoint, constitutional courts function as guardians of the constitution, entrusted not only with reviewing the constitutionality of legal norms, but also with ensuring that the exercise of state power conforms to principles of constitutional fairness, proportionality, and democratic legitimacy.

Based on these explanations, constitutional justice may be defined as both a mechanism and a normative principle within the constitutional system that seeks to ensure the supremacy of the constitution, to limit and control state power, and to protect citizens' constitutional rights through constitutional adjudication. Constitutional justice is therefore not confined to formal legal certainty, but is fundamentally concerned with the realization of substantive justice derived from constitutional values. In this sense, constitutional justice operates as a bridge between the rule of law and substantive justice, ensuring that democratic governance is consistently aligned with the constitutional commitment to justice.

Notwithstanding the central importance of constitutional justice as a foundational element of the rule of law, its existence and effectiveness are not immune from erosion. In practice, constitutional justice often encounters serious challenges when political authorities – particularly the executive and legislative branches – seek to entrench or expand their power in ways that undermine constitutional limitations. In certain cases, such challenges do not take the form of overt violations of the constitution, but rather emerge through more subtle and formalistic strategies that exploit constitutional mechanisms themselves. One such strategy is the adoption of constitutional amendments that, while procedurally valid, substantively weaken or eliminate core constitutional principles, including the separation of powers and effective constraints on governmental authority. These practices, commonly referred to as *unconstitutional constitutional amendments*, pose a significant threat to constitutional justice by hollowing out its normative substance and transforming constitutional change into an instrument for legitimizing the concentration of power. The concept of *unconstitutional constitutional amendment* refers to a constitutional paradox in which formally valid constitutional amendments are deemed substantively invalid because they undermine the foundational principles of the constitution itself. According to Yaniv Roznai, constitutional amendment powers are not unlimited, as constitutions contain core principles – such as

² Zühtü Arslan, "Why Do We Need Constitutional Justice," *Constitutional Court Republic of Türkiye*, n.d.

³ T. R. S. Allan, "Constitutional Justice and the Concept of Law," in *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge: Cambridge University Press, 2019), 1–22.

⁴ Venice Commission (European Commission for Democracy through Law), "Constitutional Justice: A Key Mission of the Venice Commission," CDL-JU(2019)003, Council of Europe, Strasbourg, 2019.

democracy, separation of powers, judicial independence, and the protection of fundamental rights—that constitute their constitutional identity and cannot be lawfully abolished even through formal amendment procedures. From this perspective, an amendment may comply with procedural requirements yet still violate implicit substantive limits inherent in the constitutional order.⁵

Against this theoretical background, the abuse of constitutional amendment mechanisms emerges as a concrete manifestation of the erosion of constitutional justice in practice. While constitutional justice is designed to restrain power and preserve constitutional supremacy, incumbent political actors have frequently exploited constitutional amendment procedures—through formal amendments, referenda, or judicial decisions—to dismantle term limits and entrench executive authority. These efforts are commonly justified by appeals to political continuity, exceptional circumstances, or the necessity of completing transformative political projects.⁶ The Venezuelan experience illustrates this pattern clearly, where President Hugo Chávez first extended presidential term limits through the constitution-making process in 1999 and subsequently pursued their complete removal via referenda in 2007 and 2009.⁷ Although the first referendum failed, the second succeeded, supported by the argument that the continuity of leadership was indispensable for sustaining the regime’s sweeping political transformation.⁸ Such cases demonstrate how constitutional amendments, though formally legitimate, may function substantively to undermine constitutional justice by weakening structural constraints on power.

Comparative constitutional practice further reveals that the manipulation of term limits is neither isolated nor exceptional, but rather a recurring phenomenon across diverse constitutional systems. Some presidential regimes, such as Mexico, have responded to this risk by adopting rigid prohibitions on presidential re-election, emphasizing the dangers of power concentration even at the expense of political continuity.⁹ Others, like Colombia, illustrate a more ambivalent trajectory, where constitutional amendments initially permitted consecutive re-election before judicial intervention halted further extensions.¹⁰ Empirical studies by

⁵ Yaniv Roznai, *Unconstitutional Constitutional Amendments, The Limits of Amendment Powers* (Oxford: Oxford University Press, 2017).

⁶ European Commission for Democracy through Law (Venice Commission), *Report on Term Limits: Part I – Presidents* (Strasbourg: Council of Europe, 2018), 14, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)010-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)010-e).

⁷ Council on Foreign Relations, “Venezuela’s Chavez Era (1958-2013)”, accessed 1 December 2025, <https://www.cfr.org/timeline/venezuelas-chavez-era>.

⁸ David Landau, “Constitution-Making and Authoritarianism in Venezuela: The First Time as Tragedy; the Second Time as Farce,” in *Constitutional Democracy in Crisis?*, ed. Mark A. Graber, Sanford Levinson, and Mark Tushnet (Oxford: Oxford University Press, 2018), 161–63.

⁹ Scott Mainwaring and Matthew Soberg Shugart, *Presidentialism and Democracy in Latin America*, ed. Scott Mainwaring and Matthew Soberg Shugart (Cambridge University Press, 1997), doi:10.1017/CBO9781139174800; Emily Edmonds-Poli and David A. Shirk, *Contemporary Mexican Politics* (New York: Rowman & Littlefield Publishers, 2009).

¹⁰ R. Dixon and D. Landau, “Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment,” *International Journal of Constitutional Law* 13, no. 3 (July 1, 2015): 606–38, doi:10.1093/icon/mov039.

Ginsburg, as well as by Maltz and Versteeg,¹¹ confirm that attempts to evade constitutional term limits occur with notable frequency, including in states classified as constitutional democracies. These studies show that formal constitutional amendment remains the most common method for extending executive tenure, alongside strategies such as replacing entire constitutions or securing judicial reinterpretations that neutralize existing constraints. Taken together, these practices exemplify how unconstitutional constitutional amendments operate as a systematic threat to constitutional justice, transforming constitutional change from a tool of democratic renewal into an instrument for the consolidation of political power.

Building upon this theoretical and comparative framework, the Indonesian context demonstrates how the abstract risks to constitutional justice may materialize within a specific constitutional system. The public discourse in Indonesia in 2022 concerning the possibility of extending presidential and vice-presidential term limits to three periods triggered significant debate among politicians and constitutional scholars, particularly in light of the absence of an unequivocal rejection by President Joko Widodo. Rather than firmly dismissing the proposal, the President's statement that he would merely "abide by the constitution" generated suspicion that a constitutional amendment could be pursued to legitimize a third term.¹² These concerns are not unfounded when viewed through the lens of constitutional justice, especially given the prevailing political configuration in which a dominant governing coalition controls a substantial majority in parliament, far outweighing the opposition. From a constitutional perspective, such an imbalance weakens the system of checks and balances and heightens the risk that constitutional amendment procedures could be instrumentalized to concentrate power, thereby mirroring the patterns observed in other jurisdictions where unconstitutional constitutional amendments have been used to erode constitutional limits on executive authority.

Accordingly, the issue of constitutional justice in the Indonesian context cannot be separated from the manner in which the constitution safeguards itself against potential misuse arising from a dominant political power configuration. The discourse on extending presidential term limits demonstrates that constitutional restraints designed to ensure leadership rotation and prevent the concentration of power may become fragile when they are left entirely to ordinary political mechanisms and standard constitutional amendment procedures. In circumstances where the balance of power within parliament no longer operates effectively, presidential term limits risk being treated as negotiable technical provisions rather than as constitutional principles essential to democratic governance. Therefore, the preservation of constitutional justice requires the strengthening of protections for fundamental constitutional provisions that function as the final bulwark against the abuse

¹¹ Tom Ginsburg et al., *On the Evasion of Executive Term Limits* ON THE EVASION OF EXECUTIVE TERM LIMITS, *Chicago Public Law & Legal Theory Working Paper*, 2010; Gideon Maltz, "The Case for Presidential Term Limits," *Journal of Democracy* 18, no. 1 (January 2007): 128-42, doi:10.1353/jod.2007.0010; Mila Versteeg et al., *THE LAW AND POLITICS OF PRESIDENTIAL TERM LIMIT EVASION*, 2019, <http://www.ssrn.com/link/U-Virginia-LEC.html>PublicLawandLegalTheory:<http://www.ssrn.com/link/U-Virginia-PUB.html>Electroniccopyavailableat:<https://ssrn.com/abstract=3359960>.

¹² CNN Indonesia, "Jokowi Didesak 3 Periode: Saya Taat Konstitusi Dan Kehendak Rakyat," *CNN Indonesia*, n.d.

of power, so that constitutional change remains within the boundaries of core constitutional values and does not evolve into an instrument for legitimizing the extension of political authority. For this reason, further examination of this issue is necessary.

2. Methods

This study employs normative legal research. According to Peter Mahmud Marzuki, legal research is a process aimed at identifying legal rules, legal principles, and legal doctrines in order to address and resolve the legal issues under examination.¹³ This study applies two types of methodological approaches, namely the conceptual approach and the statutory approach. This study utilizes primary legal materials of an authoritative nature, including legislation, official legislative records, and judicial decisions, as well as secondary legal materials consisting of non-official legal publications, all of which are collected through documentary research and systematically organized in relation to the research issues. These legal materials are then analysed using deductive reasoning to derive conclusions by moving from general legal principles to specific legal problems.

3. Results and Discussion

3.1. Why is it matter?

Presidential term limits constitute a common feature of democratic constitutions worldwide. Based on existing research, more than 80 percent of the constitutions of contemporary presidential and semi-presidential systems provide for limitations on presidential terms of office.¹⁴ Presidential term limits are a common feature of constitutional democracies, as they are often regarded as fundamental to the preservation of democratic governance. When presidents are able to remain in office without temporal, comparative experience demonstrates that they tend to consolidate extensive power, thereby weakening the system of checks and balances exercised by institutions such as the legislature and the judiciary.¹⁵ Although elections may continue to be held, they often become increasingly uncompetitive, as presidents accumulate formal and informal resources and employ institutions such as the judiciary to weaken political opposition.

Presidents evade term limits through a variety of strategies. In many cases, they pursue formal constitutional amendments to alter or remove term limits; in others, they seek to persuade courts to reinterpret existing limits or to eliminate them altogether from the constitutional framework.¹⁶ Because of the frequency with which such evasions occur, presidential term limits pose particular challenges to the principle of constitutionalism. Compared to other constitutional features, presidential term limits generate relatively limited incentives for compliance. One important insight in contemporary constitutional scholarship is the extent to which many constitutional norms can effectively enforce or stabilize themselves over time, as they often serve as foundations for valuable forms of coordination among

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Malang: Setara Press, 2010).

¹⁴ Maltz, "The Case for Presidential Term Limits."

¹⁵ David Landau, "Abusive Constitutionalism," *U.C. Davis Law Review* 47, no. 189 (2013), <https://ir.law.fsu.edu/articles/555>.

¹⁶ Landau.

political actors and governing institutions.¹⁷ However, a lifetime prohibition on re-election removes almost all incentives for presidents to engage in such forms of cooperation.

Confronted with these constraints, incumbent presidents face what is often described as the “end-of-term problem”; compliance with term limits implies that, in the short term, sitting presidents will inevitably forfeit the power and privileges associated with high office through elections, while in the long term they gain only limited reputational benefits. In countries with less consolidated democracies, political parties are often neither strong nor sufficiently independent to compel presidents to leave office. On the contrary, they may actively encourage incumbents to extend their terms in power.¹⁸ The most significant modern argument in support of presidential term limits, and the one emphasized here, is that term limits have the capacity to protect democracy and democratic competition by reducing the electoral advantages enjoyed by incumbents and diminishing the dominance of incumbent candidates.¹⁹

Incumbents enjoy a variety of advantages in democratic elections. For example, they generally possess stronger reputations or greater name recognition among voters than their challengers. John Lott characterizes these advantages as the product of prior “investment in brand name” that is non-transferable, thereby creating effective barriers to entry for political challengers. Voters may likewise be effectively non-transferable due to an incumbency bias, as they may perceive the risks associated with an incumbent as lower than those posed by a challenger.²⁰ In addition, incumbents may enjoy greater access to state resources, media support, and interest group backing, as well as the capacity to rely on various forms of

¹⁷ Javier Corrales and Michael Penfold, “Manipulating Term Limits in Latin America,” *Journal of Democracy* 25, no. 4 (October 2014): 157–68, doi:10.1353/jod.2014.0066; John Lott, Kermit Daniel, and John R Lott, “Term Limits and Electoral Competitiveness: Evidence from California’s State Legislative Race,” *Chicago Working Paper in Law & Economics*, 1997, https://chicagounbound.uchicago.edu/law_and_economics; M.Daniel Bernhardt and Daniel E. Ingberman, “Candidate Reputations and the ‘Incumbency Effect,’” *Journal of Public Economics* 27, no. 1 (June 1985): 47–67, doi:10.1016/0047-2727(85)90028-3; Daniel S. Lev, *The Transition to Guided Democracy: Indonesian Politics, 1957-1959* (Equinox Publishing, 2009); Silvia Suteu, “Friends or Foes: Is Unamendability the Answer to Democratic Backsliding?,” *Hague Journal on the Rule of Law* 16, no. 2 (August 12, 2024): 315–38, doi:10.1007/s40803-024-00233-4; George Mader, “Binding Authority: Unamendability in the United States Constitution-A Textual and Historical,” *Marquette Law Review* 99, no. 4 (2016), http://lawrepository.ualr.edu/faculty_scholarship; Adam Chilton and Mila Versteeg, “Do Constitutional Unamendability Rules Make a Difference?,” *Public Choice*, November 21, 2025, doi:10.1007/s11127-025-01350-w; Arnold Brecht, *Federalism and Regionalism in Germany: The Division of Prussia* (Oxford University Press, 1945); Cass R. Sunstein, “Constitutionalism, Prosperity, Democracy: Transition in Eastern Europe,” *Constitutional Political Economy* 2, no. 3 (September 1991): 371–94, doi:10.1007/BF02393136; Daniela Muth, “Basic Conceptions of The Legal System: A Critical Comparison Between New Zealand and Germany,” *Canterbury Law Review* 10 (2004): 451; Joel Lieske, “The Political Dynamics of Urban Voting Behavior,” *American Journal of Political Science* 33, no. 1 (February 1989): 150, doi:10.2307/2111257.

¹⁸ Suteu, “Friends or Foes: Is Unamendability the Answer to Democratic Backsliding?”

¹⁹ Barry R. Weingast and William J. Marshall, “The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets,” *Journal of Political Economy* 96, no. 1 (February 1988): 132–63.

²⁰ Bernhardt and Ingberman, “Candidate Reputations and the ‘Incumbency Effect.’”

patronage politics to secure re-election.²¹ In hybrid authoritarian–electoral regimes, incumbents may benefit from active media support and from the ability to use civil and criminal law to intimidate and harass political opponents and their supporters.²²

In this regard, research conducted by Javier Corrales and Michael Penfold found that, between 1998 and 2006 in Latin American countries, incumbent presidents had a 90 percent probability of winning a consecutive second term and an 83 percent probability of securing further or indefinite re-election, effectively increasing the likelihood of re-election for incumbent presidential candidates by 62.8 percent.²³ Incumbency also affects the margin of victory in presidential elections; it increases a president’s winning margin over the closest rival by approximately 11.2 percent and constitutes the strongest factor in predicting both the probability and the margin of victory in presidential contests.²⁴ More extremely, the ability of incumbents to win re-election in Latin American countries has been recorded as failing only twice, namely in the cases of Daniel Ortega in Nicaragua in 1992 and Hipólito Mejía in the Dominican Republic in 2004.²⁵

Similarly to earlier studies, research conducted by Gideon Maltz on African elections found that, in elections held between 1992 and 2006, incumbent presidents were re-elected at a rate of 93 percent.²⁶ The rate of incumbent re-election in Africa is so high that, when combined with prevailing patterns of authoritarian governance, only twelve sub-Saharan countries between 1989 and 2010 experienced a change in presidential leadership through democratic elections.²⁷ As noted by Cheeseman, this phenomenon is not merely attributable to transitions from presidential leadership within a large number of electoral or competitive authoritarian systems in Africa; even when such countries are excluded, incumbents still won re-election in 64 percent of elections.²⁸

Presidential term limits can significantly reduce incumbency advantages in democratic elections. In the United States, for example, there is strong evidence that term limits tend to increase the competitiveness of legislative elections. Kermit Daniel and John Lott, for instance, find that term limits have a strong and significant impact on various measures of competitiveness in state legislative elections, including electoral outcomes, margins of victory between the top two candidates, and the number of candidates elected.²⁹

In the global context, there is evidence that term limits promote increased political competition and facilitate individual leadership turnover. Transitions in political leadership often weaken dominant parties in competitive authoritarian regimes, rendering them less capable of employing tactics designed to undermine genuine political competition, such as

²¹ Nic Cheeseman, “African Elections as Vehicles for Change,” *Journal of Democracy* 21, no. 4 (October 2010): 139–53, doi:10.1353/jod.2010.0019.

²² Cheeseman.

²³ Corrales and Penfold, “Manipulating Term Limits in Latin America.”

²⁴ Corrales and Penfold.

²⁵ Corrales and Penfold.

²⁶ Maltz, “The Case for Presidential Term Limits.”

²⁷ Cheeseman, “African Elections as Vehicles for Change.”

²⁸ Cheeseman.

²⁹ Kermit Daniel, John R Lott, and Kermit Daniel, *Term Limits and Electoral Competitiveness: Evidence from California’s State Legislative Races*, *Constitutional Political Economy*, vol. 90, 1997.

electoral intimidation, voter registration fraud, and vote manipulation.³⁰ A newly appointed party leader generally receives less recognition and electoral legitimacy compared to an outgoing president.³¹ This indirectly provides opposition parties with a significantly greater opportunity to succeed in general elections against successor candidates than against incumbents.

Two prominent examples, highlighted by Maltz, are the change in political control of the presidency in Croatia in 2000 and in Kenya in 2002.³² In Croatia, President Franjo Tuđman and the Croatian Democratic Union had been in power since 1990; however, following Tuđman's death, his political successor failed to advance to the second round of the subsequent presidential election.³³ In Kenya, President Daniel arap Moi ruled from 1978 to 2002. When Moi left office in 2002 at the end of the formal term limits he had accepted in the 1990s, his party lost control of the presidency, and Mwai Kibaki was elected to office.³⁴ Moi's successor, Uhuru Kenyatta, did not command the same level of popular support or appeal as Moi, and many commentators believe that Moi deliberately selected Kenyatta because of this weakness, recognizing that it would render him dependent on Moi.³⁵

A common characteristic of authoritarian regimes is a highly powerful executive branch, often embedded in a tradition of personalized presidential governance. Consequently, to guard against the dangers of authoritarianism, it is generally necessary to impose constraints on executive power, particularly where executive authority is concentrated in an individual leader. Term limits are a clear means of achieving this, as they compel dominant presidents to leave office in a manner that diminishes the informal power of the presidency. Term limits also weaken the networks of political relationships that help sustain electoral authoritarian systems.³⁶ The spread of presidential term limits in Africa and Latin America over the past few decades reflects this logic.³⁷ As noted by John Carey, these prohibitions are motivated by both theory and the experiences of politicians seeking to retain power.³⁸

Building on the understanding that constitutional justice functions to enforce the supremacy of the constitution and to safeguard fundamental values against the abuse of power, presidential term limits may be understood as a concrete institutional expression of constitutional justice in practice. Presidential term limits do not merely regulate the duration of executive authority in a formal sense; rather, they reflect a constitutional commitment to ensuring that executive power is exercised in accordance with principles of justice, limitation, and accountability. From this perspective, term limits operate as part of the constitutional architecture designed to preserve democratic governance within the bounds of constitutional justice, as they prevent excessive concentrations of power and ensure that leadership rotation

³⁰ Maltz, "The Case for Presidential Term Limits."

³¹ Lieske, "The Political Dynamics of Urban Voting Behavior."

³² Maltz, "The Case for Presidential Term Limits."

³³ Maltz.

³⁴ Maltz.

³⁵ Maltz.

³⁶ Maltz.

³⁷ John M. Carey, "The Reelection Debate in Latin America," *Latin American Politics and Society* 45, no. 1 (2003): 119–33, doi:10.2307/3177065.

³⁸ *Ibid.*

occurs under rules that bind all political actors equally. In this sense, term limits give normative effect to the idea that the constitution is not simply a political document, but a source of substantive justice that constrains state action.

As emphasized in theories of constitutional justice, however, constitutional norms possess effective binding force only insofar as they are supported by robust enforcement mechanisms. In the context of presidential term limits, the principal challenge to constitutional justice arises when dominant political actors exploit constitutional procedures – particularly amendment mechanisms or judicial interpretation – to hollow out the substantive meaning of those limits. The removal or extension of presidential term limits through amendments that are formally valid yet substantively corrosive of the principle of limited government illustrates how constitutional justice may be reduced to procedural legality alone. Such practices are consistent with the concept of unconstitutional constitutional amendments, in which constitutional change is transformed into an instrument for legitimizing the concentration of power, thereby undermining the constitution's role as a genuine restraint on political authority.

In relation to the previously discussed phenomena of incumbency advantage and executive dominance, constitutional justice requires that presidential term limits be treated as essential constitutional principles rather than negotiable technical provisions subject to short-term political interests. When the structural advantages of incumbents are allowed to accumulate through the weakening or elimination of term limits, not only is electoral competition distorted, but the very substance of constitutional justice is placed at risk. The protection of presidential term limits is therefore integral to maintaining the constitution as a source of substantive justice – one that limits power, protects citizens' political rights, and ensures that democracy does not devolve into a purely procedural system dominated by entrenched executive authority.

3.2. Eternity Clause as a Solution

Theoretically, there are certain provisions within a constitution that are not subject to amendment. These provisions function as a “barrier of change” or, in German constitutional terminology, are referred to as *veränderungssperre*³⁹, which consist of constitutional provisions that reflect particular foundational ideas or identities of a state – ideas or identities shaped by the country's history, culture, or other fundamental characteristics that are regarded as inviolable. These provisions are commonly referred to as eternity clauses, namely constitutional norms of a permanent nature that are not subject to amendment.

Furthermore, as a *barrier of change*, the incorporation of eternity clauses in a constitution is underpinned by several fundamental objectives, namely:

1. to prevent constitutional amendments that, although adopted through formally valid majority procedures, would undermine or impair the fundamental constitutional provisions that constitute the core identity of the state.⁴⁰

³⁹ Daniela Muth, “Basic Conceptions of the Legal System: A Critical Comparison between New Zealand and Germany,” *Canterbury Law Review* 10 (2004): 152.

⁴⁰ Sharon Weintal, “The Challenge of Reconciling Constitutional Eternity Clauses with Popular Sovereignty: Toward Three-Track Democracy in Israel as a Universal Holistic Constitutional System and Theory,” *Israel Law Review* 44, no. 3 (June 23, 2011): 449–97, doi:10.1017/S0021223700018136.

2. to prevent the abuse of state authority in amending the constitution in ways that would undermine a country's traditions and cultural foundations, or, in certain cases, to ensure that particular historical experiences are not repeated.⁴¹ In this regard, Arnold Brecht argues that:

*"for preventing the possibility the majority rule will be abused to authorize barbaric measure... it would be advisable for the new German constitution (and for any other democratic constitution to be enacted in the future) to contain certain sacrosanct principles and standarts (which)... could not be impaired even by constitutional amendments. They should include fundamental principles regarding respect for the dignity of man, the prohibition of cruelties and tortures, the preclusion of ex post facto laws, equality before the law, and the democratic principle that the law itself cannot validly discriminate for reasons of faith or race."*⁴²

Based on the objectives outlined above, it can be argued that the existence of eternity clauses within a constitution signifies an effort to prevent the abuse of formally valid constitutional amendments. This is because, it cannot be denied, constitutional amendments are often initiated by legitimate holders of power who seek to alter certain constitutional provisions to advance their own interests. In this sense, eternity clauses may be understood as instruments designed to resist constitutional amendments, even where such amendments are adopted through procedurally lawful mechanisms, insofar as they threaten core constitutional principles.

Furthermore, in light of the purposes underlying eternity clauses, the provisions designated as unamendable typically possess significant normative weight and/or symbolize the constitutional identity of a state. Indonesia provides a clear example in this regard, particularly with respect to the form of the state, which is constitutionally protected from amendment and must remain a unitary state. This is explicitly stipulated in Article 37 paragraph (5) of the Constitution of the Republic of Indonesia of 1945 (hereinafter the 1945 Constitution). Similarly, the French Constitution, under Article 89, prohibits constitutional amendments that would alter the republican form of the state, thereby entrenching the Republic as a fundamental and unchangeable constitutional principle.

By contrast, several other countries entrench eternity clauses that protect not merely the form of the state, but the basic principles and defining characteristics of the constitutional order itself. Germany, for instance, provides in Article 79(3) of the *Grundgesetz* that: "Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible." Likewise, Article 110(1) of the Greek Constitution stipulates that: "The provisions of the Constitution shall be subject to revision, except those which determine the form of government as a Parliamentary Republic and those of Articles 2 paragraph 1, 4 paragraph 4 and 7, 5 paragraph 1 and 3, 13 paragraph 1, and 26.

⁴¹ Cass R. Sunstein, "Constitutionalism, Prosperity, Democracy: Transition in Eastern Europe," *Constitutional Political Economy* 2, no. 3 (September 1991): 371-94, doi:10.1007/BF02393136.

⁴² Arnold Brecht, *Federalism and Regionalism in Germany – The Division of Prussia* (Oxford: Oxford University Press, 1945).

Presidential term limits, when viewed through the lens of eternity clauses, may be conceptualized not merely as ordinary constitutional design choices, but as safeguards intended to preserve the foundational structure of democratic governance. While term limits are often categorized as institutional or procedural provisions, comparative constitutional experience demonstrates that their erosion or removal has profound implications for the balance of power, democratic competition, and the protection of constitutional values. In this sense, presidential term limits are functionally analogous to other constitutional norms that have been entrenched as unamendable in various jurisdictions, insofar as they operate to prevent the concentration of power and to secure the continuity of democratic constitutionalism across political cycles.⁴³

The empirical evidence on the effects of removing or weakening presidential term limits strongly supports the argument that such provisions play a structural role in maintaining constitutional democracy. As noted earlier, the overwhelming advantage enjoyed by incumbent presidents—whether in established democracies or hybrid regimes—creates powerful incentives to extend tenure through formal and informal means. These incentives are particularly acute in presidential systems, where executive authority is concentrated in a single individual and where political accountability mechanisms are often weaker than in parliamentary systems. Once term limits are removed or diluted, the presidency tends to evolve into an increasingly personalized institution, eroding horizontal accountability and weakening the independence of the legislature and judiciary. From this perspective, presidential term limits serve not only to regulate electoral competition but to preserve the constitutional architecture itself.

The frequent evasion of presidential term limits through constitutional amendments further underscores the inadequacy of treating such provisions as ordinary amendable rules. As comparative studies have shown, constitutional amendment procedures—despite their formal rigidity—are often vulnerable to capture by dominant political coalitions. In systems where incumbent presidents command legislative supermajorities, control political parties, or exert influence over constitutional courts, amendment procedures can be instrumentalized to legitimate the extension of executive power. This phenomenon illustrates a central paradox of constitutionalism: the same mechanisms designed to enable constitutional change can be used to dismantle constitutional constraints from within.⁴⁴ It is precisely this paradox that the doctrine of eternity clauses seeks to address.

Within constitutional theory, eternity clauses function as a response to the inherent tension between democratic decision-making and the preservation of constitutional identity. While democratic legitimacy is often associated with majority rule, constitutionalism imposes

⁴³ Adam Chilton and Mila Versteeg, “Do Constitutional Unamendability Rules Make a Difference?,” *Public Choice*, November 21, 2025, doi:10.1007/s11127-025-01350-w.

⁴⁴ George Mader, *Marquette Law Review Binding Authority: Unamendability in the United States Constitution-A Textual and Historical Analysis Repository Citation BINDING AUTHORITY: UNAMENDABILITY IN THE UNITED STATES CONSTITUTION-A TEXTUAL AND HISTORICAL ANALYSIS*, n.d., <http://scholarship.law.marquette.edu/mulr><http://scholarship.law.marquette.edu/mulr/vol99/iss4/3>Electronic copy available at: <https://ssrn.com/abstract=2729527>.

substantive limits on what majorities may decide.⁴⁵ Eternity clauses represent the strongest form of such limits, entrenching certain principles beyond the reach of even constitutionally authorized amendment procedures. The justification for these limits lies not in distrust of democracy per se, but in the recognition that democracy itself depends on the preservation of certain preconditions, including political equality, genuine competition, and the limitation of power. Presidential term limits, insofar as they safeguard these preconditions, may therefore be understood as candidates for constitutional entrenchment at the level of eternity clauses.

The relevance of this argument becomes particularly salient when examined in the context of Indonesia's constitutional history. The 1945 Constitution, as originally enacted, concentrated extensive powers in the presidency and lacked effective mechanisms for leadership turnover. This constitutional design facilitated the emergence of prolonged authoritarian rule, most notably during the Guided Democracy period under Sukarno and the New Order regime under Suharto.⁴⁶ The absence of meaningful term limits allowed executive authority to become deeply entrenched, resulting in the subordination of other state institutions and the suppression of political opposition. These historical experiences constitute a critical part of Indonesia's constitutional memory and provide a compelling rationale for the post-reformasi emphasis on limiting presidential power.

The constitutional amendments adopted between 1999 and 2002 marked a decisive break from this authoritarian legacy. Among the most significant reforms was the introduction of a clear limitation on presidential terms, restricting the president and vice-president to two terms in office. This provision was not merely a technical adjustment, but a deliberate constitutional response to the historical abuse of executive power. By institutionalizing leadership rotation, the amended constitution sought to prevent the re-emergence of personalized rule and to embed democratic accountability within the structure of the state. In this sense, presidential term limits in Indonesia are deeply intertwined with the country's constitutional identity as a post-authoritarian democracy. Despite this historical and normative significance, presidential term limits in Indonesia remain formally amendable under Article 37 of the 1945 Constitution. This formal amendability exposes the provision to the same risks observed in other jurisdictions, particularly in contexts of dominant-party politics and weak opposition. The political debates in Indonesia concerning the possibility of extending presidential terms or permitting a third term illustrate the fragility of constitutional constraints when they are left entirely to ordinary amendment procedures. Even when such proposals do not culminate in formal amendments, their recurrence signals an underlying vulnerability in the constitutional system.

From the standpoint of constitutional justice, this vulnerability raises serious concerns. Constitutional justice, as previously discussed, is not limited to the enforcement of formal legality, but is oriented toward the protection of substantive constitutional values and the prevention of power abuse. When constitutional amendment mechanisms are used—or threatened to be used—to extend presidential tenure, the risk is not merely procedural irregularity, but the erosion of the constitution's capacity to function as a genuine constraint

⁴⁵ Suteu, "Friends or Foes: Is Unamendability the Answer to Democratic Backsliding?"

⁴⁶ Daniel. S Lev, *The Transition to Guided Democracy: Indonesian Politics 1957-1959 An Equinox Classic Indonesia Book* (Sheffield: Equinox Publishing, 2009).

on power. In such circumstances, the constitution risks being reduced to a flexible political instrument rather than a normative framework grounded in justice. Designating presidential term limits as an eternity clause would constitute a doctrinal and institutional response to this risk. By entrenching term limits beyond the reach of amendment, the constitution would affirm that leadership rotation and the limitation of executive power are not contingent policy choices, but foundational principles of the Indonesian constitutional order. Such entrenchment would align Indonesia with constitutional systems that protect core democratic principles against erosion, even through formally valid constitutional change. More importantly, it would reflect a conscious decision to constitutionalize the lessons of history, ensuring that past experiences of authoritarianism are not repeated.

Comparative constitutional practice further supports this approach. While few constitutions explicitly designate presidential term limits as eternity clauses, many constitutional courts have effectively treated them as such through substantive review of constitutional amendments. Judicial interventions in countries such as Colombia demonstrate that constitutional adjudication can serve as a bulwark against amendments that threaten democratic principles, even when those amendments are procedurally valid. Formalizing this protection through an explicit eternity clause would provide greater legal certainty and reduce reliance on ad hoc judicial interpretation. In addition, entrenching presidential term limits as an eternity clause would strengthen the role of constitutional courts as guardians of constitutional justice. Courts would be empowered not merely to review ordinary legislation, but to enforce the substantive limits of constitutional change itself. This would reinforce the normative hierarchy within the constitutional system, clarifying that certain principles – such as leadership rotation and limited executive tenure – are foundational and non-negotiable. Such clarity is particularly important in political systems where constitutional ambiguity can be exploited by dominant actors.

Ultimately, the argument for regulating presidential term limits as an eternity clause in Indonesia rests on the convergence of historical experience, comparative evidence, and constitutional theory. The concentration of executive power poses a persistent threat to democratic governance, particularly in presidential systems with weak institutional checks. Term limits have proven to be one of the most effective mechanisms for mitigating this threat, yet they are also among the most frequently targeted constitutional constraints. Treating presidential term limits as an unamendable constitutional norm would therefore represent a principled response to a well-documented pattern of constitutional erosion. In conclusion, the incorporation of presidential term limits into the category of eternity clauses would reaffirm Indonesia's commitment to constitutional justice, democratic accountability, and the rule of law. It would signal that the limitation of executive power is not merely a procedural preference, but a core element of the constitutional identity shaped by historical experience and normative choice. By entrenching term limits beyond amendment, the Indonesian constitution would strengthen its capacity to restrain power, protect democratic competition, and ensure that constitutional change remains aligned with the fundamental values upon which the post-reform constitutional order was founded

4. Conclusions

This study concludes that constitutional justice should be understood as a substantive framework aimed at limiting power and protecting the core values of democratic governance, rather than merely as a procedural mechanism for enforcing constitutional supremacy. Within this framework, presidential term limits play a crucial role, particularly in presidential systems where executive power is highly concentrated. Comparative experience shows that the weakening or removal of term limits facilitates the concentration of power, reinforces incumbency advantages, and gradually erodes checks and balances. The frequent manipulation of term limits through formally valid constitutional amendments illustrates a central paradox of constitutionalism, whereby mechanisms designed to enable constitutional change are instead used to dismantle constitutional constraints from within. Eternity clauses offer a response to this paradox by placing certain principles beyond amendment, not in opposition to democracy, but to preserve the democratic preconditions of political equality, genuine competition, and limited government.

Indonesia's constitutional experience strongly reinforces this argument. The original 1945 Constitution concentrated extensive power in the presidency and lacked effective mechanisms for leadership turnover, enabling prolonged authoritarian rule under Sukarno and Suharto. The introduction of presidential term limits during the constitutional amendments of 1999–2002 represented a deliberate effort to prevent the recurrence of such abuses and to institutionalize democratic accountability. However, the continued amendability of term limits under Article 37 leaves this safeguard vulnerable to political dominance and majoritarian pressure. For this reason, this study recommends that presidential term limits in Indonesia be elevated to the status of an eternity clause, or at minimum be consistently protected by the Constitutional Court as a substantive constitutional principle. Such protection would strengthen constitutional justice, reinforce democratic accountability, and ensure that constitutional change remains aligned with the fundamental values of the post-reform constitutional order.

5. Acknowledgments

The author would like to thank Universitas 17 Agustus 1945 Surabaya.

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