

## Balancing Democracy and *Az-zari'ah* Principles: Legal Reasoning on Term Limits for Political Party Chairpersons in Indonesia

Mu'tashim Billah,<sup>1\*</sup> Vivi Rahma,<sup>2</sup> Alda Kartika Yudha<sup>3</sup>

<sup>1,2</sup>UIN Sunan Kalijaga Yogyakarta, Indonesia;

<sup>3</sup>Goethe-Universität Frankfurt, Germany

\*Email: [mutashim.billah@uin-suka.ac.id](mailto:mutashim.billah@uin-suka.ac.id)

Submitted: October 31, 2023

Revised: December 29, 2023

Published: December 31, 2023

### Abstract

*This study explores the issue of term limits for political party chairpersons from the perspective of democracy and the principles of *az-zari'ah*. In 2022-2023, there was a surge in lawsuits to the Constitutional Court regarding the absence of rules regarding the term of office of political party chairpersons in Indonesia. The number of lawsuits shows that the absence of such rules has caused considerable problems, both within and outside political parties and the state. Various political diseases have become increasingly apparent, such as the perception that public officials only follow the direction of party leaders (bossism), and this has the potential to lead to abuse of power by political party chairmen in the context of public policy. Using a qualitative literature review methodology, this study uses a comparative philosophical approach, namely by paying attention to the principles of democracy and applying methods derived from *az-zari'ah*. Both of these are used because, on the one hand, Indonesia is a country that applies the principles of democracy; on the other hand, many Indonesian people believe in the truth of Islamic law, including the principles of *az-zari'ah*. It was found that, from the perspective of *az-zari'ah*, the term of office of the party chairman must be limited (closed) so as not to become a vehicle for political disease. By *Az-zari'ah*, limiting the term of party leaders becomes a crucial matter, as it helps mitigate potential harms that may arise in the absence of such limitations. Meanwhile, from a democratic perspective, it also has the same value implications, namely the need to limit the term of office of the chairman. Democracy has the basic function of limiting political power in a person and not expanding or giving unlimited power like a monarchical system. This is because democracy believes that power tends to corrupt, and absolute power corrupts. So, since Indonesia uses the philosophy of democracy in its country, every political institution, in this case, political parties, must abide by the same rules.*

**Keywords:** *Terms Limit; Political Party; Leadership; Democracy; Az-zari'ah.*



## Introduction

Party chairpersons occupy a privileged and strategic position within the political party structure. Party members rely heavily on the chairperson's political rights, and they also feel a moral obligation to the chairperson, especially if the chairperson is also the founder of the party.<sup>1</sup> Even at the level of decision-making in the House of Representatives, Bambang Pacul clearly states that the political lobbying of party chairmen can influence the decisions of DPR members. This is because DPR members obey their respective party chairmen.<sup>2</sup> However, Megawati Soekarno Putri's statement about Jokowi being a "party official," show how party chairpersons can have great influence in party policies and decision-making. This article try to explain the phenomenon of the lack of term limit for political party chairperson.

Research on term limits in government has been conducted by several scholars. Most of them focus on presidential term limits in Indonesia. We agree that presidential term limits aim to prevent the absolutism of presidential power, as well as to prevent abuse of power and abuse of authority.<sup>3</sup> Azhari stated that this restriction also serves as a check and balance mechanism between state institutions.<sup>4</sup> In addition, from the perspective of maqashid sharia, this restriction is in line with Islamic values and goals. Nonetheless, the 2-period rule potentially poses a risk of abuse of power or conflict of interest when a president runs for a second term.<sup>5</sup>

Presidential term limits are the result of the Indonesian people's efforts at democratic reform. Therefore, there is a possibility that this limitation can change in accordance with the wishes of the people,<sup>6</sup> although this view is

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<sup>1</sup> Nge, Herri Junius. "Oligarki partai politik dalam rekrutmen calon kepala daerah." *Academia Praja: Jurnal Ilmu Politik, Pemerintahan, dan Administrasi Publik* 1, no. 01 (2018): 59-84.

<sup>2</sup> Wahyu Suryana, "Di hadapan Mahfud, Bambang Pacul Akui Juragan Anggota DPR adalah Bos Parpol," *Republika*, 1 April 2023, dalam <https://news.republika.co.id/berita/rseyca377/di-hadapan-mahfud-bambang-pacul-akui-juragan-anggota-dpr-adalah-bos-parpol> diakses 16 September 2023.

<sup>3</sup> Yudhistira, Elsan. "Pembatasan Masa Jabatan Presiden Sebagai Upaya Menghindari Terjadinya Abuse Of Power." *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 2 (2020): 132-154.

<sup>4</sup> Azhari, Fadil. "Perkembangan Pengaturan Pembatasan Masa Jabatan Presiden Dan Wakil Presiden Dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." PhD diss., Universitas Andalas, 2020.

<sup>5</sup> Admaja, Fito Adji Satria. "Pembatasan Masa Jabatan Presiden Dan Wakil Presiden Di Indonesia Perspektif Maqāsid Asy-Syarī 'Ah." PhD diss., UIN Sunan Kalijaga, 2019.

<sup>6</sup> Pin, Pin, Jannus Timbo Halomoan Siahaan, Bertha Nellya, and Matius Bangun. "Presiden Indonesia Tiga Periode." *Jurnal Darma Agung* 29, no. 2 (2021): 267-272.

not in line with Ferdinandus' opinion. According to him, any attempt to extend the term of office of the president or vice president is considered unconstitutional.<sup>7</sup> This means that, in order to maintain Indonesia's democracy, the presidential term should not be changed without good reason.

In addition, another research focus on term limits can be seen in the limitation of the term of office of legislative members. To date, there is no prohibition for anyone to serve as a member of the legislature for multiple terms.<sup>8</sup> The absence of term limits for members of the legislature could lead to potential abuse of power by members of the DPR, who are supposed to oversee the president. Another potential is the risk of corruption<sup>9</sup> or even the creation of legislative power circles that only benefit certain groups.<sup>10</sup> In short, research has focused more on limiting the power of public officials, including the executive and legislature, than on limiting power within political parties, even though the role of political parties in a democracy is very important and closely related to the power of public officials.

Political parties, which are supposed to represent the interests of the people within the framework of the constitution, have lost the ability to carry out this task. Today, political parties have turned into tools for political elites to maintain their power. In fact, it is not an exaggeration to say that political parties now operate like companies that are subject to their shareholders, namely the party chairman.<sup>11</sup> Political parties that are supposed to be managed professionally are now trapped in centralized, oligarchic, and

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<sup>7</sup> Ferdinandus, Leonard Uumbu Saingu. "UUD 1945 Sebagai Konstitusi Normatif (Pembatasan Masa Jabatan Presiden dan Wakil Presiden)." *SUPREMASI HUKUM* 19, no. 02 (2023): 19-26.

<sup>8</sup> Junadi, Yudi, Dedi Mulyadi, M. Rendi Aridhayandi, and Christopher Surya Salim. "Urgensi Pembatasan Periodisasi Masa Jabatan Anggota Legislatif dalam Perspektif Konfigurasi Politik Hukum Indonesia." *Jurnal Hukum Mimbar Justitia* 7, no. 2 (2021): 140-159.

<sup>9</sup> Hamrin, Hamrin, and Cucuk Endratno. "Masa Jabatan Lembaga Legislatif Di Indonesia Guna Menegakan Prinsip Konstitualisme." *NATIONAL JOURNAL of LAW* 6, no. 1 (2022): 704-719.

<sup>10</sup> Al Kautsar, Muhammad, and Kurniawan Kurniawan. "Pembatasan Periodisasi Masa Jabatan Anggota Legislatif." *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 3, no. 3 (2019): 361-371.

<sup>11</sup> Syaputra, Muhammad Yusrizal Adi. "Koalisi Partai Politik di Kabinet: Antara Penguatan Lembaga Kepresidenan atau Politik Balas Budi." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 1 (2020): 111-131.

personalistic patterns.<sup>12</sup> This pattern causes all party cadres who serve in various positions of power to obey the decisions of the party chairman.

The management of political parties should be professional and structured because political parties have a very important role in the post-reform democratic process in Indonesia. However, this idealism is difficult to achieve due to personalization in political parties. Parties that should be well-managed and structured instead depend on the individuals of the political elite.<sup>13</sup> As a result, political parties have changed from a place of democratic regeneration to a tool for party leaders to maintain their power. Personalization in political parties can be seen from the fact that many party chairmen never change. This shows the difficulty of political parties in finding a replacement for the chairman.<sup>14</sup> This phenomenon is the background for several public challenges to the Constitutional Court to limit the term of office of party chairpersons.

Public demands related to limiting the term of office of political party chairmen began to emerge in 2023. The first lawsuit was filed by Papuans to the Constitutional Court on June 27, 2023 with case number 53/PUU-XXI/2023.<sup>15</sup> Furthermore, the lawsuit was filed by Yogyakarta and Nias residents Eliadi Hulu (Applicant I) and Saiful Salim (Applicant II) with case number 69/PUU-XXI/2023.<sup>16</sup> Another lawsuit was also filed by Rissky Kurniawan, a student from the Faculty of Law at Batam International University, with a judicial review of Law Number 2/2011 on Amendments to Law Number 12/2008 on Political Parties, and the case was numbered 77/PUU-XXI/2023.<sup>17</sup> In addition, another student from the Faculty of Law of Batam International University, Albert Ola Masan Setiawan Muda, also participated in filing a lawsuit related to the Political Party Law to the Constitutional Court (MK). Albert Ola Masan Setiawan Muda proposed limiting the maximum term of office of the General Chairman of a Political

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<sup>12</sup> Imansyah, Teguh. "Regulasi partai politik dalam mewujudkan penguatan peran dan fungsi kelembagaan partai politik." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1.3 (2012): 375-395.

<sup>13</sup> Aisah Putri Budiatri, Syamsuddin Haris, Lili Romli, Sri Nuryanti, Moch. Nurhasim, Luky Sandra Amalia, Devi Darmawan, Ridho Imawan Hanafi, *Personalisasi Partai Politik di Indonesia Era Reformasi* (Jakarta: yayasan pustaka obor, 2018), hlm. xiv.

<sup>14</sup> Riqiey, Baharuddin, Adella Anggia Pramesti, and Alif Cahya Sakti. "Pembatasan Masa Jabatan Ketua Umum Parpol Dalam Perspektif Demokrasi." *Jurnal Mengkaji Indonesia* 1.1 (2022): 1-17.

<sup>15</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19298>

<sup>16</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19330>

<sup>17</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19377>

Party to 2 times.<sup>18</sup> The basis of this lawsuit is based on the difference between the political party law and the 1945 Constitution.

There have not been many studies on the theme of limiting the term of office of political party chairmen in Indonesia. Baharuddin et al. stated that the government (executive and legislative) has the authority to regulate the term of office of party chairmen through the mechanism of revising the Law on Political Parties.<sup>19</sup> Zidani stated that the absence of restrictions on the position of party chairman creates problems in politics. Therefore, limiting the term of office of political party chairmen is important when viewed from the perspective of democracy and *maslahah mursalah*. This restriction can bring justice, benefit, and restore the main function of political parties as a means of political aspiration of the Indonesian people.<sup>20</sup> Arifianto also highlighted the term of office of political party chairmen from the perspective of *maslahah mursalah*. According to him, political parties indicate weak democratization, which is shown by the difficulty of leadership circulation within the party. Limiting the term of office of political parties falls into the category of *maslahah al-ammah* because it contains elements of general benefit for the people and the Indonesian government.<sup>21</sup> Al-Kautsar focuses on discussing the limitation of the term of office of party members. According to him, there is no specific rule that limits the term of office of members of the DPR, DPRD and DPRK, but depends on the decision of each party chairman.<sup>22</sup>

This study is a literature-based research using a qualitative approach. This research focuses on the theme of term limits for political party leaders in Indonesia. To analyze this topic, the approach used is a normative-comparative-philosophical approach, by considering the perspective of the philosophy of democracy in the context of term limits. In addition, this research also compares these views with the perspective of Islamic law, especially through the *az-zari'ah* method of consideration. Both of these are

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<sup>18</sup> <https://news.detik.com/berita/d-6826758/mahasiswa-di-batam-juga-gugat-ke-mk-agar-ketum-parpol-maksimal-2-periode>

<sup>19</sup> Riqiey, Baharuddin, Adella Anggia Pramesti, and Alif Cahya Sakti. "Pembatasan Masa Jabatan Ketua Umum Parpol Dalam Perspektif Demokrasi." *Jurnal Mengkaji Indonesia* 1.1 (2022): 1-17.

<sup>20</sup> Zidani, Rifki. *Urgensi Pembatasan Periode Jabatan Ketua Umum Partai Politik Perspektif Demokrasi Dan Maslahah Mursalah*. Diss. UIN Sunan Kalijaga Yogyakarta, 2022.

<sup>21</sup> Arifianto, Rafiq. *Urgensi Pembatasan Masa Jabatan Ketua Umum Partai Politik: Perspektif Maslahah*. Diss. UIN Sunan Kalijaga Yogyakarta, 2022.

<sup>22</sup> Al Kautsar, Muhammad, and Kurniawan Kurniawan. "Pembatasan Periode Masa Jabatan Anggota Legislatif." *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan* 3.3 (2019): 361-371.

used because, on the one hand, Indonesia is a country that applies the principles of democracy; on the other hand, the Indonesian people believe in the truth of Islamic law, including the principles of *az-zari'ah*. The results of this research provide readers with an understanding of the views of democracy and *az-zari'ah* regarding term limits for political party leaders in Indonesia. This study attempts to combine aspects of philosophy, law and religion in the context of this complex discussion.

## Discussion

### Strengthening Internal Party Democracy: Cadre Circulation as a Catalyst for Balanced Leadership

Political parties play a central role in the democratic process in Indonesia. Participation in political parties is the main route for prospective state leaders and representatives of the people. Therefore, it is important for political parties to have professional recruitment mechanisms and regeneration systems.<sup>23</sup> Unfortunately, the reality is that not all political parties carry out recruitment and regeneration mechanisms properly and professionally. On the contrary, some political parties tend to take shortcuts by involving family elements as political party controllers. In addition, there is also a tendency in some political parties to use instant methods by recruiting artists as candidates, with the belief that the popularity of artists can bring votes in general elections.

One of the main functions of regeneration is to create qualified leaders who can replace future leaders.<sup>24</sup> A good regeneration process should produce cadres who have the capacity to strengthen the role and function of political parties more effectively. In the context of political parties, cadre education or regeneration efforts are very important things that must be carried out professionally. This is because these cadres have great potential to occupy strategic positions in state institutions and carry out important tasks in the state.<sup>25</sup>

If the process of regeneration and recruitment of prospective leaders is not done properly and professionally, the impact can lead to a leadership crisis in various regions in Indonesia. For example, in the 2017 Pati Regency

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<sup>23</sup> Harahap, Insan Harapan. "Kaderisasi Partai Politik dan Pengaruhnya Terhadap Kepemimpinan Nasional." (2017).

<sup>24</sup> Syahputra, Muhammad Rizki, and T. Darmansah. "Fungsi Kaderisasi Dalam Meningkatkan Kualitas Kepemimpinan." *Journal Of Education And Teaching Learning (JETL)* 2, no. 3 (2020): 20-28.

<sup>25</sup> Pasaribu, Payerli. "Peranan Partai Politik dalam Melaksanakan Pendidikan Politik." *JPPUMA: Jurnal Ilmu Pemerintahan dan Sosial Politik UMA (Journal of Governance and Political Social UMA)* 5, no. 1 (2017): 51-59.

Regional Head Election (Pilkada), there was only one single candidate participating in the election. This was due to the fact that 8 out of 9 participating political parties chose to support one incumbent candidate.<sup>26</sup> In fact, if the regeneration function in a party runs well, it is likely to produce several political figures who have the potential to compete in general elections.

Not achieving the regeneration function in a party can result in the phenomenon of personalization in political parties. Political personalization can be seen as a process in which the character of individual politicians becomes more dominant than the political party itself or group identity.<sup>27</sup> There are at least two factors that can cause the emergence of the personalization phenomenon in political parties. First, people's loyalty to a political party, even to the political individual who leads the party. Second, there is a lot of lobbying and mediation carried out by political elites on various occasions.<sup>28</sup> This phenomenon can lead to the dominance of individual figures in the political world, which in turn can reduce the role of political parties as the main forum in democracy.

Personalization in political parties can be influenced by internal and external factors. Internal factors include the influence of strong party leaders, the charisma of party leaders, and the emergence of a patronage culture within the party. Meanwhile, external factors include the political system in a presidential democracy, as well as the multi-party system.<sup>29</sup>

There are four characteristics that can be observed in the phenomenon of personalization of political parties. First, parties often have difficulty in changing leadership, which results in leadership that focuses more on individuals. Second, leadership changes in political parties can produce political factions which then encourage members to leave the party and establish new parties. Third, the strong influence of culture and community behavior related to factors such as ethnicity, religion, social class, and

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<sup>26</sup> Prakoso, Danny Widodo Uji, and Laila Kholid Alfindaus. "Analisis Rekrutmen dan Kaderisasi Partai Politik Pada Fenomena Calon Tunggal Petahana Studi Kasus: Pilkada Kabupaten Pati 2017." *Journal of Politic and Government Studies* 7, no. 2 (2018): 181-190.

<sup>27</sup> Karvonen, Lauri. *The personalisation of politics: A study of parliamentary democracies*. Ecpr Press, 2010.

<sup>28</sup> Budiatri, Aisah Putri, Syamsuddin Haris, Lili Romli, Sri Nuryanti, Moch Nurhasim, Luky Sandra Amalia, Devi Darmawan, and Ridho Imawan Hanafi. *Personalisasi partai politik di Indonesia era reformasi*. Yayasan Pustaka Obor Indonesia, 2018. Hlm. 27.

<sup>29</sup> Ekawati, Esty, Donna Sweinstani, and K. Mouliza. "Dampak Personalisasi Partai Terhadap Demokrasi Internal Partai Di Indonesia Pasca Orde Baru." *Jurnal Wacana Politik* 5, no. 2 (2020).



urban/rural, which play an important role in politics. Communities and civil society organizations can also be a source of party members and leaders. Fourth, there is family or kinship involvement in political party structures, leading to dominance in politics at both the national and local levels.<sup>30</sup> This characteristic has similarities with the phenomenon of political oligarchy where power and influence are concentrated in a limited elite group.

Oligarchy is a political phenomenon in which power is concentrated in the hands of a small minority. Oligarchs tend to seek to control various resources to maintain and strengthen their dominance in the political system.<sup>31</sup> Although Indonesia has entered the reform era, one of whose goals is to reduce the influence of oligarchy in politics, in reality, political oligarchy still exists and has changed its form in political practices within political parties.

As revealed by Juniar, some relatively new major political parties have adopted a political oligarchy system where one or two political actors with great financial power control decisions and policies within the political party.<sup>32</sup> The danger of the emergence of this political oligarchy is that political decisions can be taken by a handful of people who may have personal agendas or interests, which can undermine democratic principles.

In addition, personalization in political parties can also lead to authoritarianism within the party. This goes against the spirit of post-reform democracy in Indonesia, which tries to promote transparency, participation and accountability. Limiting the presidential term to two terms is one of the efforts to prevent too long a stay of one individual in power that could result in abuse of power.<sup>33</sup> The example of Indonesia's history before reformasi, where Soekarno and Soeharto served as president for more than two terms, has shown the risk of abuses in the political system.<sup>34</sup> Thus, term limits are an important step in maintaining the balance of power and preventing potential abuse of power in politics.

The importance of limiting power in Indonesia's democratic system is reflected in various mechanisms that have been designed in the 1945 Constitution to control and limit presidential power. One such mechanism is

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<sup>30</sup> Nurhasim, Moch. "Kegagalan Modernisasi Partai Politik di Era Reformasi." *Jurnal Penelitian Politik* 10, no. 1 (2013): 17-28.

<sup>31</sup> Jeffery A. Winters, *Oligarki* (Jakarta: Gramedia Pustaka Utama, 2011), hlm. 51.

<sup>32</sup> Juniar, Afif. "Redesain demokrasi internal partai politik: Upaya mencegah oligarki dan korupsi partai politik." *Jurnal Politikom Indonesiana* 6, no. 1 (2021): 17-39.

<sup>33</sup> Maharani, Cahya. "Konstitusionalisme Dalam Pembatasan Masa Jabatan Presiden." *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 2, no. 1 (2020): 14-20.

<sup>34</sup> Pratiwi, Juang Intan, Neneng Salama, and Siti Ulfah. "Pembatasan Masa Jabatan Presiden di Indonesia." *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia* 3, no. 1 (2021): 18-26.



the limitation of the presidential term to two terms. In addition, there is also an impeachment mechanism whereby the president and vice president can be dismissed by the People's Consultative Assembly (MPR) at the suggestion of the House of Representatives (DPR) if proven to have committed unlawful acts. This mechanism aims to prevent abuse of power and safeguard democratic principles.

Therefore, it is not surprising that the idea of extending the presidential term in 2022 has drawn criticism and rejection from various elements of society.<sup>35</sup> Limiting the presidential term is one of the important pillars in maintaining the balance of power and preventing the dominance of one individual in politics.

In the practice of democracy, political parties also have a very important role. To achieve the post-reform democratic ideals, political parties must set an example and implement the democratic system properly. This includes adopting mechanisms to limit the term of office of party leaders, supervision of party leaders, and procedures to replace party leaders if they are found to have violated the law or party rules. In this way, political parties can avoid a system of oligarchy and authoritarianism, and replace it with a regeneration system that provides equal opportunities for all cadres to participate in politics. Thus, political parties can benefit from the potential emergence of qualified cadres who can increase the electability of the party in the eyes of the community.

Cadre in political parties has an important role in running a democratic system and regenerating leadership. This regeneration aims to ensure that political parties have replacement leaders ready if the current leaders are no longer able to lead. However, when regeneration in political parties does not go well, it can have a negative impact on the democratic process within political parties. One of the negative impacts that arise is political oligarchy, where political power is concentrated in the hands of a handful of elites, and this leads to personalization within political parties. This personalization can open loopholes for corrupt practices and weaken the oversight system of the government.<sup>36</sup>

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<sup>35</sup> Hakim, Dani Amran, and Muhamad Rusjana. "Wacana Perpanjangan Masa Jabatan Presiden Perspektif Pemikiran Hukum Progresif." *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 6, no. 1 (2023): 85-103.

<sup>36</sup> Arifianto, Rafiq. "Urgensi Pembatasan Masa Jabatan Ketua Umum Partai Politik: Perspektif Masalah." PhD diss., UIN Sunan Kalijaga Yogyakarta, 2022.

## A Democratic Approach to Restricting Party Chairpersons: Perspectives on *Az-zari'ah* Principles

The democratic system and the existence of political parties in Indonesia have a close relationship since the proclamation of Indonesian independence.<sup>37</sup> Political parties are one of the important elements in the development of a democratic system.<sup>38</sup> Political parties have vital duties and responsibilities in the democratic life of a nation, such as articulating public wishes, carrying out political education, offering public policies, and as a forum for political choices for the community in elections.<sup>39</sup> In short, political parties in a democratic system become an important vehicle to accommodate various aspirations of the community to be conveyed to the government.

The current system is direct democracy, where sovereignty is in the hands of the people who represent their power through the people's representative institutions elected through general elections. The more intensive political parties carry out their roles and functions, the higher the quality of the democratic system in Indonesia. However, the rise and fall of the quality of state institutions is highly dependent on the quality of the cadres that will be proposed by each party participating in the election.<sup>40</sup> Because of the crucial function of political parties, political parties should be able to ensure healthy and effective democratization.<sup>41</sup> Thus, there is a dependency relationship between political parties, the quality of cadres nominated, the quality of state institutions, and the health of the democratic system in Indonesia.

The phenomenon of dynastic politics and the centralization of power within political parties are serious problems in Indonesia's democratic system. This has resulted in various negative impacts on the quality of democracy in the country. One of the main reasons for the emergence of the

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<sup>37</sup> Muksin, Ayub. "Partai Politik dan Sistem Demokrasi di Indonesia." *Populis: Jurnal Sosial dan Humaniora* 3.2 (2018): 777-788.

<sup>38</sup> Ekawati, Esty, Donna Sweinstani, and K. Mouliza. "Dampak Personalisasi Partai Terhadap Demokrasi Internal Partai Di Indonesia Pasca Orde Baru." *Jurnal Wacana Politik* 5, no. 2 (2020).

<sup>39</sup> Juniar, Afif. "Redesain demokrasi internal partai politik: Upaya mencegah oligarki dan korupsi partai politik." *Jurnal Politikom Indonesiana* 6, no. 1 (2021): 17-39.

<sup>40</sup> Thohir, Muhammad. "Dinamika Partai Politik Indonesia untuk Membangun Negara Hukum Indonesia yang Demokratis." *Jurnal Studi Sosial Dan Politik* 1.2 (2017): 145-154.

<sup>41</sup> Ferdian, Ridho, et al. Model Kaderisasi Partai Politik melalui Sayap Partai. *Wacana Publik* 14.1 (2020) 35-40

dynastic politics phenomenon is the centralized nature of political parties that focus on the role of the party chairman.<sup>42</sup>

Examples mentioned, such as Megawati Soekarno Putri's statement about Jokowi being a "party official," show how party chairpersons can have great influence in party policies and decision-making. In addition, party chairpersons often have influence over party cadres who hold positions in government. This can result in decision-making that is not always based on democratic considerations or the public interest, but rather based on the interests of the political elite.<sup>43</sup>

Personalization of political parties, elite interests, and political fragmentation within parties are factors that support the development of dynastic politics. Fanatical support from various groups within political parties can create imbalances in decision-making, and often does not reflect sound democratic principles. It is important to address the issues of dynastic politics and centralization of power within political parties in order for Indonesia's democratic system to function better and more in line with sound democratic principles.<sup>44</sup> This may involve reforms in the internal structure of political parties, stricter oversight of the actions of political parties, and increased public awareness of the importance of more democratic participation in politics.

In the end, democracy is no longer in the hands of the people, but in the hands of political elites, especially party leaders. A study shows that in the context of regional elections in Indonesia, the victory of a particular candidate is influenced, among other things, by how much influence the political party chairman has. Therefore, decision-making schemes within political parties must go through the approval and consideration of the political party chairman.<sup>45</sup> This triggers the practice of political party authoritarianism by a handful of elites, which leads to the practice of power corruption. Political corruption makes the relationship between the ruler and the community (cadres) a feudal relationship that is not egalitarian. A non-egalitarian community will eventually deny the importance of effective

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<sup>42</sup> Fitriyah, Fitriyah. "Partai Politik, Rekrutmen Politik dan Pembentukan Dinasti Politik pada Pemilihan Kepala Daerah (Pilkada)." *Politika: Jurnal Ilmu Politik* 11.1 (2020): 1-17.

<sup>43</sup> <https://www.youtube.com/watch?v=T2OiXPH4nL0>

<sup>44</sup> Irawan, Sahirah. "Elite Dan Partai Politik (Kekuasaan Megawati Soekarnoputri Di Kursi Ketua Umum Partai Demokrasi Indonesia Perjuangan [PDI PERJUANGAN] Dalam Lima Periode)." Bachelor's thesis, Program Studi Ilmu Politik Fakultas Ilmu Sosial Dan Ilmu Politik Universitas Islam Negeri Syarif Hidayatullah Jakarta.

<sup>45</sup> Witianti, Siti. "Peran Ketua Umum Partai Politik Dalam Pencalonan Kepala Daerah pada Pemilihan Kepala Daerah Serentak Di Indonesia." *Jurnal Wacana Politik* 4, no. 1 (2019).

control over power.<sup>46</sup> In the end, the power of political party leaders occupies a higher position than that of public officials.

Party chairpersons occupy a privileged and strategic position within the political party structure. They are usually elected within the party, and some parties even have chairpersons who are also party founders. Because of this powerful position, chairpersons have more dominant formal political rights compared to other party members. Party members rely heavily on the chairperson's political rights, and they also feel a moral obligation to the chairperson, especially if the chairperson is also the founder of the party.<sup>47</sup> The impact of this situation is that public policies taken by party members who hold public office can be easily influenced by the interests of a small group of political elites.

The great influence of the political elite at the central level means that many party cadres at the regional level must obey the decisions of the elite at the center. This coercive power must be obeyed by the party cadres, which if not obeyed, the central elite can easily dismiss them unilaterally.<sup>48</sup> This condition has, among other things, led to an unhealthy democratic climate in Indonesia. This also has implications for public policies that inevitably have to be approved by the party elite. Even at the level of decision-making in the House of Representatives, Bambang Pacul clearly states that the political lobbying of party chairmen can influence the decisions of DPR members. This is because DPR members obey their respective party chairmen.<sup>49</sup> This political practice has led to public protests against the concept of democracy within political parties.

Public demands for restrictions on political party chairmen began to emerge in 2023. The first lawsuit was filed by Papuans to the Constitutional Court on June 27, 2023 with case number 53/PUU-XXI/2023 in the case of material testing of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Political Party Law), filed by Muhammad Helmi Fahrozi, E. Ramos Petege, and Leonardus O. Magai. The Petitioners challenged Article 2 paragraph 1 letter b of the Political Party Law

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<sup>46</sup> Alkostar, Artidjo. "Korelasi korupsi politik dengan hukum dan pemerintahan di negara modern (Telaah tentang praktik korupsi politik dan penanggulangannya)." *Jurnal Hukum Ius Quia Iustum* (2009).

<sup>47</sup> Nge, Herri Junius. "Oligarki partai politik dalam rekrutmen calon kepala daerah." *Academia Praja: Jurnal Ilmu Politik, Pemerintahan, dan Administrasi Publik* 1, no. 01 (2018): 59-84.

<sup>48</sup> *Ibid.*

<sup>49</sup> Wahyu Suryana, "Di hadapan Mahfud, Bambang Pacul Akui Juragan Anggota DPR adalah Bos Parpol," *Republika*, 1 April 2023, dalam <https://news.republika.co.id/berita/rseyca377/di-hadapan-mahfud-bambang-pacul-akui-juragan-anggota-dpr-adalah-bos-parpol> diakses 16 September 2023.

which states "Founders and administrators of political parties are prohibited from concurrently serving as members of other political parties".<sup>50</sup> However, their lawsuit was rejected by the Constitutional Court because it was considered not serious.<sup>51</sup>

Furthermore, the lawsuit was filed by Yogyakarta and Nias residents Eliadi Hulu (Applicant I) and Saiful Salim (Applicant II) with case number 69/PUU-XXI/2023. The Constitutional Court (MK) held a hearing on Material Testing of Article 23 paragraph (1) of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Political Party Law) against the 1945 Constitution. The hearing was held on Tuesday (11/7/2023) in the Plenary Session Room of the Constitutional Court with the agenda of Preliminary Examination. The Plaintiffs tested the norms of Article 23 paragraph (1) of the Political Party Law which states, "The change of management of political parties at each level is carried out in accordance with the AD and ART".<sup>52</sup>

A lawsuit was also filed by Risky Kurniawan, a student of the Faculty of Law at Batam International University, who filed a judicial review of Law Number 2 of 2011 concerning Amendments to Law Number 12 of 2008 concerning Political Parties to the Constitutional Court (MK). The first hearing of Case Number 77/PUU-XXI/2023 was held on Thursday (27/7/2023). Risky Kurniawan (Applicant) tested the norm of Article 2 paragraph (1b) of the Political Party Law, which states, "Founders and administrators of political parties are prohibited from concurrently serving as members of other political parties". According to the Applicant, the provisions of Article 2 paragraph (1b) of the Political Party Law are contrary to Article 1 paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution.<sup>53</sup>

A student from the Faculty of Law at Batam International University, Albert Ola Masan Setiawan Muda, also participated in challenging the Political Party Law to the Constitutional Court (MK). Albert Ola Masan Setiawan Muda requested that the term of office of the Chairman of Political Parties be limited to a maximum of 2 times. "Stating that Article 2 paragraph (1b) of the Political Party Law is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "Political Party Management, especially the Chairperson or other designation in accordance with the Articles of Association and Bylaws of the Political Party, holds a

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<sup>50</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19298>

<sup>51</sup> <https://news.detik.com/berita/d-6804733/dua-warga-papua-juga-gugat-jabatan-ketum-parpol-agar-jadi-2-periode>

<sup>52</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19330>

<sup>53</sup> <https://www.mkri.id/index.php?page=web.Berita&id=19377>

term of office for 5 years and can only be re-elected 2 (two) times in the same position, either consecutively or non-consecutively, and the Founders and administrators of Political Parties are prohibited from concurrently being members of other Political Parties".<sup>54</sup>

The personalization of political parties is due to the absence of rules that explicitly state that the position of party chairman must be limited. Law No. 2/2011 as the legal basis for political parties does not provide details on how long a political figure can serve as party chairman. So that all these regulations are strongly influenced by the AD / ART of each political party. Therefore, although the average term of office for party chairpersons is limited to five years, they can be re-elected in subsequent election periods indefinitely.

Although there are no specific rules regarding the limitation of the term of office of political party chairmen, there are several parties that regulate this in the party's bylaws. The Prosperous Justice Party and the United Development Party are examples of political parties in Indonesia that implement term limits for political party leaders in Indonesia.<sup>55</sup> In Vietnam, which uses a communist system of government, there are rules regarding the age limit of the party leader as well as the president and the limit of his term of office, which is 2 reigns. Although at the last congress, Nguyen Phu Trong, who is 76 years old and has served as party chairman twice, will be given a waiver by the congress delegates to serve a third time.<sup>56</sup> In Nepal, the CPN-UML party also has the same rules as the Vietnamese communist party, namely an age limit of 70 years and two terms of office. Although there have been many proposals to abolish both rules in order to perpetuate certain figures.<sup>57</sup>

Leadership succession in an organization such as a political party is a normal dynamic that aims to maintain control over a government. Leadership succession in the party needs to be well designed to create

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<sup>54</sup> <https://news.detik.com/berita/d-6826758/mahasiswa-di-batam-juga-gugat-ke-mk-agar-ketum-parpol-maksimal-2-periode>

<sup>55</sup> Riqiey, Baharuddin, Adella Anggia Pramesti, and Alif Cahya Sakti. "Pembatasan Masa Jabatan Ketua Umum Parpol Dalam Perspektif Demokrasi." *Jurnal Mengkaji Indonesia* 1, no. 1 (2022): 1-17.

<sup>56</sup> Gregory B. Poling and Murray Hiebert, "Vietnam Party Congress Meets to Choose Leaders, Set Policy Direction," *CSIS* dalam <https://www.csis.org/analysis/vietnam-party-congress-meets-choose-leaders-set-policy-direction> diakses 7 Oktober 2023.

<sup>57</sup> Nishan Khatiwada, "Age, term limits in political parties contingent on top leaders' whims," *The Kathmandu Post*, dalam <https://kathmandupost.com/politics/2023/06/10/age-term-limits-in-political-parties-contingent-on-top-leaders-whims> diakses 7 Oktober 2023.

political stability within the party. If not, it will certainly be the cause of the breakup of political parties into several factions, until the formation of a new party as a counterpoint.<sup>58</sup> By not regulating the term of office of the party chairman in a law, it can be considered as an open legal policy that is adjusted to the needs and results of the agreement of each political party.

In addition to open policy reasons, the state is considered not entitled to regulate and intervene in party rules and policies. This is because party financing is 90% sourced from each party, or even the party chairman. Although there is assistance from APBN and APBD finances based on Law No. 2/2011. In the end, there is ambiguity in the concept of democracy implemented by the state and internal parties. Presidential leadership is limited to a 2-year term because if it is not limited, it is feared that it will lead to the absolutism of presidential power. However, democracy within the internal party does not make the absolutism of the power of the political party chairman, where a party chairman has higher authority than his cadres who serve as public officials.

In terms of democratic theory, the absence of restrictions on the term of office of party leaders is one example that justifies Hallaq's thesis that the separation of powers, which is one of the foundations of democracy, is a myth and mere theory. In reality, political elites gather power in a handful of people (oligarchy), and even then it is not done with the classification of the judiciary, legislature and executive.<sup>59</sup> In this case, democracy has the basic function of limiting the political power that a person can have, and not extending or even giving unlimited power as in a monarchical system. This is because the basic assumption in democracy is that power has a tendency to corrupt, and absolute power corrupts absolutely. Since Indonesia uses the philosophy of democracy in politics and the state, it makes sense that all state institutions and political institutions should apply the same philosophy.

In the context of Islamic political research, there is not a single Qur'anic or al-Hadith text that discusses limiting the power or tenure of leaders. If we refer to the political system implemented during the time of the Prophet, there were no restrictions on leadership, which meant that a caliph or leader was appointed to lead for the rest of his life.<sup>60</sup> Therefore, after the

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<sup>58</sup> Nailatul Lulu Atum Mabruroh, "Suksesi Kepemimpinan dalam Parpol," dalam <https://cilacap.bawaslu.go.id/2022.09.21/09:44/suksesi-kepemimpinan-dalam-parpol/> diakses 7 Oktober 2023.

<sup>59</sup> Hallaq, Wael. *The impossible state: Islam, politics, and modernity's moral predicament* (Columbia University Press, 2012).

<sup>60</sup> RKT, M. Yunus. "Limitasi Kepemimpinan di Indonesia dalam Perspektif Politik Islam." *IN RIGHT: Jurnal Agama dan Hak Azazi Manusia* 4, no. 1 (2017).



prophetic era and the khulafa ar-rashidin, the topic of political discussion became one of the many issues that remained unresolved among Muslims.

In the context of limiting the term of office of a leader, Yusuf al-Qaradawi, a contemporary scholar, argues that limiting the term of office of the president is permissible. According to him, the ability to limit one's power in a political context is based on the principle of benefit. The benefit that can be obtained by limiting the power of the president is to prevent abuse of power.<sup>61</sup> This principle is in line with the principle of *maslahah mursalah*, which is a public interest that is obtained without any clear command or prohibition in religious texts. But we don't employ this Islamic legal maxim as a basis of our argumentation, rather than employing *maslahah mursalah* concept, we tried to conduct the analysis by using the concept of *az-zari'ah*.

An Islamic law must have a legal *illat*, because a rule has stated that the existence and absence of Islamic law depends on the existence of the *illat*. The legal '*illat* serves as the basis for determining Islamic law, consisting of: '*illat syar'iyah* which is already written in the text and '*illat 'aqliyah* which is the result of thought. Normatively, there is no single proposition that alludes to the limitation of the term of office of state leaders, let alone the term of office of party chairmen. Therefore, the legal *illat* that must be explored in determining this law must use human reasoning (*illat 'aqliyah*). This legal *illat* is then used to determine whether there is an element of mafsadah so that the action must be prohibited, closed *wasilah* (*sadd az-zari'ah*), or allowed, opened *wasilah* (*fath az-zari'ah*).<sup>62</sup>

In the discourse of The principal of Islamic jurisprudence, the concept of *sadd az-zari'ah* is one of the arguments of Shari'i that is still debated (*mukhtalaf fih*). The Malikiyah and Hanabilah scholars consider *sadd az-zari'ah* to be a basic proof of shar'i rulings, while the Hanafiah and Shafi'iyah consider it to be a method.<sup>63</sup> *Sadd az-zari'ah* can be defined as something that is permissible on its face but can be a means or a means to something that is forbidden and prohibited.

According to Wahbah Az-Zuhaili, the concept of *az-zari'ah* as a means, tool, and way has both positive and negative sides. On the positive side, these

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<sup>61</sup> Rofila, Rofila. "Pembatasan masa jabatan Presiden di Indonesia dalam pasal 7 UUD 1945 Perspektif Fiqih Siyasah." PhD diss., Universitas Islam Negeri Kiai Achmad Siddiq Jember, 2023.

<sup>62</sup> Baroroh, Nurdhin. "Metamorfosis "Illat Hukum" Dalam Sad Adz-Dzari'ah Dan Fath Adz-Dzariah (Sebuah Kajian Perbandingan)." *Al-Mazaahib: Jurnal Perbandingan Hukum* 5, no. 2 (2017).

<sup>63</sup> Wahbah az-Zuhaili, *al-Wajiz fi Ushul al-Fiqh al-Islami*, cet. ke-2 (Beirut: Dar al-Khair, 2006), hlm. 280.

means or tools are allowed because they have a purpose and lead to something good. Therefore, the permissibility of using these means is referred to as "*fath az-zari'ah*".<sup>64</sup> In the context of limiting the term of office of the party chairperson, the discussion regarding limiting the term of office of the party chairperson must be seen and positioned as a means. This means that if the unlimited term of office of the party chairman brings positive impacts and benefits, then this path must be kept open and maintained. If party leadership succession disrupts political stability within the party, causes factional divisions, or even the downfall of a party, then instruments to retain competent party leaders should be considered.

Conversely, if the term of office of the party chairperson is not limited, but this has the potential to cause damage, then there should be restrictions. In other words, a limit on the term of office of the party chairperson must be imposed because otherwise it may lead to mischief. The method of closing off means that may cause harm, known as "*sadd az-zari'ah*," involves the prohibition of anything that is initially permitted but may become the cause of something that is not permitted or prohibited.<sup>65</sup> There are several potential problems that can arise if the political elite has unrestricted control of the party, such as reduced cadre development within political parties resulting in a lack of qualified national figures; the emergence of a political oligarchy, where party power is only centered on a few specific individuals; the occurrence of authoritarianism within the party, where cadres must submit to the decision of one individual party elite, without taking into account other opinions; it can even result in the loss of authority of national leaders (executive, legislative) because they must submit to what the party chairman orders. This means national leaders are regarded as followers of political parties, which means they serve the political elite rather than serving the needs of the people.

Although there are no specific religious texts that explicitly address the issue of limiting power, considering it from the perspective of *jalb al-masalih* (bringing about benefits) and *dar'u al-mafasid* (preventing harm) is necessary. Human beings need to contemplate which aspects have the potential for bringing about benefits, and those pathways should be kept open. Conversely, aspects that have the potential for causing harm should be closed off. This principle can be applied in the context of party political democracy or the personalization of political parties. Essentially, the personalization of political parties has both beneficial and detrimental aspects. In the short

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<sup>64</sup> Wahbah az-Zuhaili, *Usul al-Fiqh al-Islami*, Juz II (Beirut: Dar al-Fikri al-Muasir, 1986), hlm. 173.

<sup>65</sup> Muhammad Thahir Ibn Asyur, *Maqasid Syari'ah al-Islamiyyah* (Malaysia: Dar An-Nafais, 2001), hlm. 365.

term, the lack of change in party leadership for newly established parties is advantageous. This is because newly established parties require a strong political figure who can guide the party toward specific goals. However, in the long run, political parties need to change their democratic systems by transitioning leadership positions for the sake of internal democracy and the circulation of political elites within the party.<sup>66</sup>

## Conclusion

Considering the post-reform era's democratic spirit, characterized by the establishment of regulations limiting the presidential and vice-presidential terms as a means to prevent power abuse, it is not unlikely that this spirit could be adopted and implemented within the framework of democracy within political parties. If executive power in the state is restricted to prevent abuse of power, it is equally plausible that the tenure of party leaders could also lead to such abuse. Thus, in the context of democracy, specific regulations governing the limitation of a party leader's term are essential. Political organizations, such as political parties, should ideally reflect the principles of an ideal democracy. This is because the current political landscape suggests that party members serving in public office often seem to act merely as deputies of the party leader, making their policies susceptible to the interests of a few political elites from within each party. From an Islamic political perspective, while there are no specific detailed rules regarding the restriction of power, whether of state leaders or party leaders, historical examples indicate that leadership positions in Islamic history were typically held for life, resembling the leadership of the early caliphs. Nevertheless, when viewed in the contemporary context, limiting the tenure of party leaders becomes a crucial matter, as it helps mitigate potential harms that may arise in the absence of such limitations. This argument draws upon the concept of *az-zari'ah*, emphasizing the consideration of overall benefits and potential harms in decision-making processes.

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<sup>66</sup> Ekawati, Esty, Donna Sweinstani, and K. Mouliza. "Dampak Personalisasi Partai Terhadap Demokrasi Internal Partai Di Indonesia Pasca Orde Baru." *Jurnal Wacana Politik* 5, no. 2 (2020).

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