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Unamendable Provisions in The 1945 Constitution to Limit The Power of Constitutional Amendment in Indonesia

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Abstract

The concept of unamendable provisions in the 1945 Constitution of the Republic of Indonesia is an effort to limit the power of constitutional amendments to ensure they remain constitutional. In Indonesia, amendments to the 1945 Constitution are introduced through a highly stringent process, with certain provisions explicitly prohibited from being altered. These provisions aim to protect the fundamental aspects of the constitution, such as the unitary state form and the republican system of government, as stipulated in Article 37, paragraph 5 of the 1945 Constitution. This article examines whether the concept of unamendable provisions can be applied to other provisions not explicitly mentioned within the amendment limits. This research article employs a doctrinal legal approach using historical and conceptual methods, combined with descriptive analysis. Through this approach, the research explores the historical background of unamendable provisions and how this concept is applied in Indonesian legal practice. The findings indicate that, although not explicitly stated in the 1945 Constitution, certain provisions can be considered unamendable constructively, as they are closely related to the fundamental principles underlying the state and government of Indonesia, including provisions on the limitation of the presidential term of office. Unamendable provisions in the 1945 Constitution play a crucial role in maintaining the stability and continuity of the state and in preventing constitutional changes that could undermine the agreed-upon fundamental principles. This underscores the importance of understanding and interpreting these provisions

INTRODUCTION

A government requires fundamental rules to define and determine its form, structure, and governance. This rule is commonly called a constitution¹. Along the way, the Constitution as a fundamental rule needs to be changed. Because a constitution, even if it has been designed

¹ Pan Mohammad Faiz, *Amandemen Konstitusi: Komparasi Negara Kesatuan dan Negara Federal*, (Depok: Rajawali Press, 2020), 16.

for a long time, will always be behind the development of society, if at some point the possibility of that development occurs, then the constitution has to be modified.² Therefore, each constitution also regulates how to change the constitution.

The concept of unamendable provisions stems from the idea that certain provisions in a constitution cannot be altered through ordinary amendment procedures. This concept aims to protect the fundamental elements of a state, such as the form of government, territorial integrity, human rights, and basic principles of democracy.³ In this context, unamendable provisions serve as safeguards against changes that could undermine the foundations of the state and society, ensuring that core values remain preserved even in the face of political or social change.⁴

In the study of constitutional law, the most fundamental principles of state governance that cannot be altered through ordinary amendments have been widely discussed by several legal scholars. Carl Schmitt introduced the concept of the guardian of the constitution, emphasizing the importance of preserving the integrity of the constitution from changes that could undermine the fundamental structure of the state. Schmitt argued that certain elements of the constitution must remain unchangeable as they define the core identity of the state.⁵ Similarly, Hans Kelsen explained that the constitution, as the highest norm, has a certain hierarchy. Therefore, some norms within it should not be amendable to maintain the consistency and stability of the legal system.⁶ Yaniv Roznai also stressed that unamendable provisions are a crucial mechanism for safeguarding the essence of the constitution.⁷

The concept of unamendable provisions has been widely adopted in the constitutional systems of several countries, primarily to protect the most fundamental principles of state governance. The German Constitution, after World War II, established that certain principles,

² Rasji Grace Avianti and Kent Edward, "Dinamika Konstitusi Dan Perubahan Hukum Tata Negara Sebuah Tinjauan Perubahan Konstitusi Di Era Digital," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 18 (2023): 626-634.

³ Oran Doyle, "Constitutional Identity and Unamendability," *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity* (2024): 259.

⁴ Albert Richard and Yaniv Roznai, "Emergency Unamendability: Limitations on Constitutional Amendment in Extreme Conditions," *Md. L. Rev.* 81 (2021): 243.

⁵ Mariano Croce, "Democracy: Constrained or Militant? Carl Schmitt and Karl Loewenstein on What it Means to Defend the Constitution," *Intellectual History Review* (2024): 1-20.

⁶ Monika Polzin, "The German Eternity Clause, Hans Kelsen and the Malaysian Basic Structure Doctrine," *CALJ* 7 (2022): 1.

⁷ Yaniv Roznai, "The Uses and Abuses of Constitutional Unamendability," *In Routledge Handbook of Comparative Constitutional Change*, (Routledge, 2020), 150-166.

such as human dignity and the federal structure of the state, cannot be amended.⁸ In France, the Republic as a form of state is unchangeable. This demonstrates how unamendable provisions are used to protect the fundamental structure of a state from unwanted changes.⁹ Thus, the most fundamental principles of state governance depend heavily on each country's specific constitutional needs to ensure the continuity of the state.

In Indonesia, there were provisions in the procedure for amending the 1945 Constitution of the Republic of Indonesia that are substantial restrictions that exclude or prohibit changes to certain matters in the constitution, which are called unamendable provisions.¹⁰ The unamendable provision in the 1945 Constitution of the Republic of Indonesia can be found in Article 37, paragraph 5, which specifically states that the form of a unitary state and the republican of government cannot be changed. Additionally, from various sources that researchers have found, it is also said that the Preamble to the 1945 Constitution cannot be changed. According to Jimly Asshiddiqie, the preamble is not an object of change because the preamble to the 1945 Constitution of the Republic of Indonesia contains a formulation of the goals of the government and the basis of the Pancasila state as the spirit of the 1945 Constitution¹¹. Refers to Article 37, Amendment Constitution based on Article 37 are aimed at the articles and not at the preamble.

Recently, there have been provisions in the 1945 Constitution of the Republic of Indonesia that were not included in the amendment limits but were rejected when there was talk of change, namely the idea of extending the periodization term limit of the president as regulated in Article 7 of the 1945 Constitution, which forward by several ministers and elite parties after the COVID-19 pandemic¹².

From a positive law point of view, extending the presidential term limit is not a violation of the Constitution because there is no prohibition of amendments as stipulated in the Procedure for Amendment of the Constitution of 1945. However, in state law, the extension of the

⁸ Hryhorii Berchenko, Tetiana Slinko, and Oleh Horai, "Unamendable Provisions of the Constitution and the Territorial Integrity of Ukraine," *Access to Just. E. Eur.* (2022): 113.

⁹ Navisha Uzaira Khan and Kohelica Nag, "Comparative Study of The Amendment Procedure in India, Switzerland, Canada, USA, France, and Germany," *IJRAR-International Journal of Research and Analytical Reviews (IJRAR)* 10, no. 4 (2023): 260-285.

¹⁰ Mohammad Ibrahim, "Pembatasan Kekuasaan Amendemen Konstitusi: Teori, Praktik di beberapa Negara dan Relevansinya di Indonesia", *Jurnal Konstitusi* Volume 17 Nomor 3 (2020): 563, <https://doi.org/10.31078/jk1735>

¹¹ Jimly Asshiddiqie, *Perkembangan baru tentang Konstitusi dan konstitusionalisme Dalam Teori dan Praktek*, (Yogyakarta: Genta Publishing, 2018), 17

¹² BBC Indonesia, "Penundaan Pemilu 2024: Seruan kalangan elit politik, apakah mungkin terealisasi?," 2022, <https://www.bbc.com/indonesia/indonesia-60561290>.

periodization of the presidency is an idea that is incompatible with the spirit of constitutionalism embodied in the state system, the spirit of restricting power. In the end, the idea didn't come true. In Indonesia, the question of the term limit of a three-term president always comes at the end of a presidential term. During the reign of Susilo Bambang Yudhoyono (SBY) to President Joko Widodo¹³.

There have been several studies on the concept of unamendable provisions in Indonesia. Kurniawati, in her writing, explains that the existence of unamendable provisions must be explicitly stated in the constitution, and the authority of the People's Consultative Assembly (MPR) to amend the constitution should be limited by the concept of unamendable provisions.¹⁴ On the other hand, Jurdi and Yani, in their study, conclude that non-formal constitutional amendments are restricted based on the fundamental substance of the constitution (supra-constitutional unamendability), which cannot be altered through non-formal changes, such as the state structure, human rights, and limitations on power. Additionally, these restrictions are also based on the moral constitution derived from the oath of office to uphold and enforce the constitution.¹⁵ Unlike these studies, this article focuses more on the possibility of establishing the two-term presidential limit as an unamendable provision in Indonesia, along with the legal arguments supporting it.

The theories used in this article are constitutional theory, constitutional amendment theory, and legal certainty theory. Constitutional theory is employed to explain the nature of the constitution as the highest legal norm, which requires that any amendments be made with caution.¹⁶ Constitutional amendment theory is used to explain the reasons and procedures for amending the constitution, as well as which provisions should be considered unamendable and the legal arguments supporting this. Meanwhile, legal certainty theory is applied to explain that constitutional norms related to amendments must be clearly defined and not open to multiple

¹³ Peneliti LIPI, "Isu Presiden 3 Periode Muncul sejak Era SBY hingga Jokowi", 2021, <https://nasional.kompas.com/read/2021/03/15/14540581/peneliti-lipi-isu-presiden-3-periode-muncul-sejak-era-sby-hingga-jokowi>.

¹⁴ Ika Kurniawati, "Keberadaan Klausul Yang Tidak Dapat Diubah (Unamendable Provisions) Sebagai Identitas Konstitusi," *Lex Renaissance* 7, no. 2 (2022): 226-242.

¹⁵ Fajlurrahman Jurdi dan Ahmad Yani, "Legitimacy of Non-Formal Constitutional Reforms and Restrictions on Constitutionalism: Legitimasi Perubahan Konstitusi Non-formal dan Pembatasannya dalam Paham Konstitusionalisme," *Jurnal Konstitusi* 20, no. 2 (2023): 238-256.

¹⁶ Abdul Kholik Munthe, et.al., "Perjalanan dan Problematika Konstitusi di Indonesia," *Educandumedia: Jurnal Ilmu pendidikan dan kependidikan* 2, no. 1 (2023): 33-47.

interpretations.¹⁷ All these theories are utilized to address the core issues examined in this article.

This article is based on research employing a doctrinal legal approach with historical and conceptual methods, analyzed descriptively to examine the concept of unamendable provisions in the context of Indonesian constitutional law, particularly concerning the periodization of the presidential term. The doctrinal legal approach is used to analyze the applicable legal provisions, especially the 1945 Constitution, related to unamendable provisions. The historical method is used to trace the development of the concept of unamendable provisions in the Indonesian constitution. Meanwhile, the conceptual method is used to analyze the fundamental concepts underlying unamendable provisions, including their definitions, characteristics, and objectives.¹⁸

Therefore, this article will focus on examining the following issues: Is the concept of unamendable provisions applicable to the provisions regarding the periodization of the presidential term? Additionally, how has the concept of unamendable provisions developed concerning the periodization of the presidential term in Indonesia? The research objectives are to analyze whether the concept of unamendable provisions can be applied to the provisions regarding the periodization of the presidential term in the 1945 Constitution of the Republic of Indonesia, and to examine the development of this concept in relation to the periodization of the presidential term in Indonesia, including how it is applied in legal practice and its implications for the stability and continuity of governance.

The Concept Of Unamendable Provision In Article 7 Of The 1945 Constitution Of The Republic Of Indonesia

The Constitution, as a fundamental law, was created to limit the power of the government to create a balance and eliminate abuse of power. At this point, the limitation of the power of the president does not only cover the content of his authority but can also include a limit on the time a person serves as president. According to Sri Soemantri, the restriction of the authority of the institutions of the state covers two things: first, the limits of authority that

¹⁷ Siti Halilah dan Mhd Fakhurrahman Arif, "Asas Kepastian Hukum Menurut Para Ahli," *Siyasah: Jurnal Hukum Tata Negara* 4, no. II (2021):134.

¹⁸ David Tan, "Metode penelitian hukum: Mengupas dan Mengulas Metodologi dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463-2478.

cover its content; and second, restrictions of power relating to the "time" that the power is exercised¹⁹. Before the amendment, Article 7 of UUD 1945 was known to regulate only the term limit of the president but did not provide any specific limitation regarding the term limitation of the office of President and Vice President in Indonesia. The article about the presidential term limit is so open to interpretation that there is a chance a president can serve continuously as Sukarno and Soeharto did²⁰.

In addition to a different interpretation of presidential term limit, the provisions of Article 7 of the 1945 UUD have also been manifestly and explicitly deviated from. In 1963, the People's Consultative Assembly (MPR), through MPRS Decree No. III/MPRS/1963 on the appointment of the Great Leader of the Indonesian Revolution as President of the Republic of Indonesia for life, clearly declared Sukarno as President for life²¹. Then, during Soeharto's leadership, that continued to roll without any limitations in 1973, 1978, 1983, 1988, 1993, and 1998. Furthermore, there is MPR Decree No. IV/MPR/1983 on the Referendum, which states that before making changes to the 1945 UUD, a national referendum must be held. This would make it difficult to change the 1945 UUD, as it were so that executive power could continue for the next period.

Eventually, The 7th Article of the 1945 Constitution of the Republic of Indonesia underwent an amendment. This change forces the periodization of the president's office to be limited to a certain period explicitly determined in the 1945 Constitution. With this change, the Presidential term limit becomes more strict, namely that he can only hold the same position for 2 (two) times. Amendment to Article 7 of The 1945 Constitution was a response to the authoritarian system of government carried out by the president from the old order, starting with confirming President Soekarno as President for life and continuing during the Soeharto era, when he was allowed to be re-elected by the MPR repeatedly²².

According to Richard Albert, three types of provisions cannot be changed. The first is the unamendable provision through its constitutional text (codified), the second is the unamendable provision through the interpretation of the constitutional court, and the third is the constructively unamendable provision. The Unamendable Provision became constructive when

¹⁹ Sri Soemantri M, "Fungsi Konstitusi Dalam Pembatasan Kekuasaan, *Jurnal Hukum IUS QUIA IUSTUM*", Vol. 3 No.6, 2016, <https://doi.org/10.20885/iustum.vol3.iss6.art1>,

²⁰ Abdul Ghoftar, *Perbandingan Kekuasaan Presiden Indonesia Setelah Perubahan UUD 1945 dengan Delapan Negara Maju*, (Jakarta: Kencana Prenada Media Group, 2009), 3.

²¹ Putera Astomo, *Hukum Tata Negara Teori dan Praktek*, (Yogyakarta: Thafa Media, 2014),136.

²² A.M Fatwa, *Potret Konstitusi Pasca Amandemen UUD 1945*, (Jakarta: Kompas Media Nusantara, 2009), xi

the conditions for change were too strict to meet. This kind of unamendable provision stems from the inability of the parties to make changes, although formally, The clause is open to modification. Unamendable provision emerged when the constitutional text defined a regulation that could be freely changed, but the political reality at the time showed that it was unchangeable. The unamendable provision stems from a split between the political actors, who eventually reached a dead end. Under these circumstances, a formal amendment becomes impossible. These difficulties may be caused by political inconsistencies or a strong rejection of what is to be changed²³.

Article 2, paragraph 1, of the 1945 Constitution of the Republic of Indonesia state that the People's Consultative Assembly (MPR) consists of members of the House of Representatives (DPR) and members of the Regional Representative Council (DPD). Politically, this provision means that to make changes to the 1945 Constitution, a commonality of views and interests is required between members of the People's Consultative Assembly (MPR) from the House of Representatives (DPR) and members of the Regional Representative Council (DPD)²⁴. These difficulties are compounded by procedures that are not easy. Procedurally, even to be able to be put on the agenda at the People's Consultative Assembly (MPR) session, according to Article 37 of the 1945 Constitution, a proposal for change must be submitted by at least one-third of the People's Consultative Assembly (MPR). This means that to be able to call the MPR to hold a hearing to discuss the proposed changes, you must have the support of at least one-third of the MPR members. Not to mention talking about the substance of the change itself²⁵.

Apart from that, the next challenge that one must confront is the requirement for a quorum at the MPR session to discuss the proposed changes, which requires the presence of at least 2/3 of the total number of MPR members. Additionally, there is no assurance that the suggested changes put forth by at least some MPR members will be approved, even in the unlikely event that these two challenges are resolved. Therefore, to be approved as a decision of the People's Consultative Assembly, the proposed proposal must obtain the approval of at least half of the members of the People's Consultative Assembly plus one member. This last

²³ Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitution*, (New york: Oxford University Press, 2019), 158

²⁴ I Dewa Palguna, *Pengaduan Konstitusional: Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara*, (Jakarta: Sinar Grafika, 2013), 594

²⁵ *Ibid*, 595

provision is more difficult than the provisions that were in effect previously, namely before the amendments to the 1945 Constitution were made²⁶.

According to K.C. Wheare, The Constitution is shaped by the people's perception of it. If the Constitution is highly regarded and its content is deemed just and proper, there is a strong desire to safeguard it from attempts to alter it. Even though there is a formal process to modify it, that doesn't necessarily mean that it's easy to amend²⁷. So, according to this argument, the restrictions on changing the Constitution are mainly influenced by the country's political power²⁸.

Based on current conditions, the PDIP-led Working Indonesia Coalition has a majority vote of 349 seats or 60 percent of the seats in the House of Representatives (DPR) apart from the number of Regional Representative Council (DPD) members who are non-partisan (non-party) groups totaling 136 seats. This coalition consists of PDIP with 128 seats, Golkar with 85 seats, NasDem with 59 seats, PKB with 58 seats, Demokrat with 54 seats, PKS with 50 seats, PAN with 44 seats, PPP with 19 seats, plus Gerindra with 78 seats in the Coalition. This means that through the Coalition in Parliament, seen from the composition of the majority vote owned by President Jokowi, it is possible to amend the Constitution of the 1945 Constitution, especially Article 7. This certainly does not contradict the Constitution if we follow the amendment process regulated in Article 37 of the 1945 Constitution²⁹.

However, majority of parties like the Democratic Party³⁰, Nasdem Party³¹, Gerindra Party³², and The Prosperous Justice Party (PKS)³³ refuse to extend the term limit. Even the

²⁶ Ibid, 596

²⁷ K.C. Wheare, *Konstitusi-Konstitusi Modern*, (Bandung: Nusamedia, 2015), 119

²⁸ Sri Soemantri, *Prosedur dan Sistem Perubahan Konstitusi*, (Bandung: Alumni, 1986), 151

²⁹ Muhammad Aljebra, Aliksan Rauf & Rudini Hasyim Rado, "Menakar Peluang Masa Jabatan Presiden 3 Periode dalam Konfigurasi Politik Hukum", *Jurnal Al-Adalah: Jurnal Hukum dan Politik Islam*, Vol. 7, No. 1 2022, doi: 10.35673/ajmpi.v7i1.2054.

³⁰ "Beda Sikap Nasdem Soal Penambahan Masa Jabatan Presiden: Dulu Pengusul, Kini Menolak", Kompas, 2022, <https://nasional.kompas.com/read/2022/03/04/13193661/beda-sikap-nasdem-soal-penambahan-masa-jabatan-presiden-dulu-pengusul-kini?page=all>.

³¹ "Gerindra Tolak Wacana Perpanjangan Masa Jabatan Presiden", Kumparan, 2022, <https://kumparan.com/kumparannews/gerindra-tolak-wacana-perpanjangan-masa-jabatan-presiden-1xbPo5QcWWY>.

³² "Tolak Perpanjangan Masa Jabatan Presiden Melalui Dekrit", Fraksi PKS, 2022, <https://fraksi.pks.id/2022/11/25/tolak-perpanjangan-masa-jabatan-presiden-melalui-dekrit-hnw-indonesia-negara-hukum-bukan-kekuasaan/>.

³³ "PDIP Tolak Tunda Pemilu dan Perpanjangan Masa Jabatan Presiden", Kompas, 2022, <https://www.kompas.tv/regional/271731/pdip-tolak-tunda-pemilu-dan-perpanjangan-masa-jabatan-presiden>.

Indonesian Democracy Party of Struggle (PDIP)³⁴ the party that led Jokowi in the 2019 General election commission declined to grant an extension of the term. Whereas the party that supported the discourse for the extension of the presidency between the PKB, PAN, and Golkar³⁵. Therefore, constructively through political parties, Article 7 cannot be amended. If linked to the concept of the Unamendable Provision, the presidential periodization provision can be categorized as a constructively unamendable provision. Although not explicitly prohibited, members of the People's Consultative Assembly, whose composition is predominantly composed of members of majority political parties, have rejected the extension of the presidential periodicity. Thus this factor automatically influences the power of change, namely the People's Consultative Assembly as the authority to change the 1945 UUD.

Development of the Concept of Unamendable Provisions in Article 7 of the 1945 Constitution

The limitation of the length of time a person can hold a position raises a serious dilemma between the need for continuity that an old officer can guarantee and the need for renewal that a new officer may guarantee. In this case, two periods are sufficient for the continuity of a policy on the grounds of the bad tendency of mankind to hold power for too long³⁶.

According to Idrus Affandi, changing the term of presidential term limit in the Republic of Indonesia from two to three periods is a logical thing in the current era of democracy. Two presidential terms are considered more democratic and fair. The term limit can bring meaningful progress in national development. Making the head of state serve more than two terms would close the door to regeneration as well as violate the spirit of democracy. Every decade, there's always a new figure that's potentially leading the nation well. If one person holds national leadership for too long, regeneration stops. Worse still, leadership for more than two periods will lead to "cult of the individual", that is, more respect for man than for his position as a public servant. Therefore, two-periods are more democratic and more respectful of the framework of national leadership³⁷. Even if there is a strong reason to extend a presidential term limit, it is

³⁴“Saat PAN, PKB, dan Golkar Satu Suara Soal Perpanjangan Masa Jabatan Presiden, Kompas, 2022, <https://nasional.kompas.com/read/2022/02/26/08370701/saat-pan-pkb-dan-golkar-satu-suara-soal-perpanjangan-jabatan-presiden>.

³⁵ A. Ramlan Surbakti, *Reformasi Kekuasaan Presiden*, (Jakarta: Grasindo, 1998), 16.

³⁶ Ibid, 17.

³⁷Idrus Affandi, *Back To The Original 1945: Constitution Of The Republic Of Indonesia*, (Bandung: Remaja Rosdakarya, 2020), 28

still unclear how long an optimal executive term is. For these reasons, there is a huge variation in the way the Constitution regulates the presidential term limit³⁸.

In the practice of several countries, there are several concepts of term limit presidential system, namely no re-election, no immediate re-election, only one re-election, and no limitation re-election³⁹. For Indonesia itself, the system used to limit the periodization of presidential office is to use the concept of only one re-election; that is, a president can run for re-election one more time in the next period. This system is also used in countries such as the United States, Argentina, Bolivia, Belarus, Madagascar, Malawi, the Republic of the Congo, and Zambia.

Unamendable provision aims to explain that the Constitution has an identity that must be maintained when amended, which is aimed at the next generation to uphold the values contained in the Constitution. In the context of improvement, is it necessary that the provisions for the periodization of presidential term be positioned the same as the unitary state and republican government, which are explicitly in the 1945 Constitution as unamendable provisions? Of course, to ensure legal certainty, this needs to be done. Considering that one of the objectives of the law itself is to provide legal certainty, ensuring that the term limit president is not changed for the next generation is an important thing to do. Because that this issue continues to arise at the end of the term limit of someone who has been president for two terms.

According to Richard Albert⁴⁰, the reasons why the constitution makers chose to write Unamendable Provisions into the constitutional text are as follows:

- a. Reassurance as a strategy for managing disputes so that there is a guarantee that a situation has not changed;
- b. Reconciliation as a way to reconcile opposing parties to end the conflict;
- c. Preservation as a characteristic or identity of a country so that future generations must respect the decisions of the constitution makers;
- d. Transformation as a change for the better because of past events that are considered bad so that provisions that cannot be changed are considered as aspirations for the constitution-makers;
- e. Crisis management to resolve the problem from an emergency so that what cannot be changed are not certain principles, values, or structures in the constitutional text. However, a prohibition on making changes to the constitution during an emergency;

³⁸ Tom Ginsburg and Zachary Elkins, *One Size Does Not Fit All: The Provision and Interpretation of Presidential Term Limits in The Politics of Presidential Term Limit*, (United Kingdom: Oxford University Press, 2019), 50.

³⁹ Elsan Yudhistira, "Pembatasan Masa Jabatan Presiden Sebagai Upaya Menghindari Terjadinya *Abuse of Power*", *Jurnal Ilmiah Hukum*, Vol. 23, No. 2 Tahun 2020, <https://doi.org/10.56087/aijih.v23i2.43>.

⁴⁰ Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitution*, 141-149.

- f. Settlement a provision that cannot be amended used to prohibit changes to the constitution within a certain period, because changes to the Constitution are carried out with careful consideration;
- g. Value expression as a form of expression from the constitution makers that the provisions that constitute the Unamendable Provision are more valued than other provisions in the constitutional text;

In the practice of several countries, declaring presidential term limits an unamendable provision is a normal thing to do. As has happened in African countries that have had political intensity in the past, which has damaged constitutionalism⁴¹, the way to do this is to state that the periodization of the Presidential term limit cannot be changed in the text of the constitution. Several countries state in their constitutional text (codified) that they have unamendable provisions as follows⁴²:

- a. Burkina Faso, Article 165
"No bill or proposal of revision of the Constitution is receivable when it effects: the limitative clause of the number of presidential mandates; the duration of the presidential mandate; the republican nature and form of the State; the multiparty system; the integrity of the national territory.
- b. Central African Republic, Article 153
Expressly excluded from revision are: The republican and secular form of the State; the number and duration of the presidential mandates; the conditions of eligibility; the incompatibilities to the functions of President of the Republic; the fundamental rights of the citizen; the provisions of this Article.
- c. Niger Constituion, Article 175, Paragraph 2
...The republican form of the State, the multiparty [system], the principle of the separation of State and religion and the provisions of paragraphs 1 (... mandate of five (5) years, renewable one (1) sole time) and paragraphs 2 (In any case, no one may exercise more than two (2) presidential mandates or extend the mandate for any reason whatsoever) of Article 47 and of Article 185 of this Constitution may not be made the object of any revision.
- d. Democratic Republik of Congo, Article 220 Paragraph I
The republican form of the State, the principle of universal suffrage, the representative form of Government, the number and the duration of the

⁴¹ Yaniv Roznai, "Unconstititutional Constitutional Amendment: Study Nature Constitutional Amendmen Powers, Department Of Law of the London School of Economics for degree", (Disertasi, London: 2014), 39

⁴² Micha Wiebusch and Christina Murray, "Presidential Term Limits and the African Union", *Journal of African Law*, Vol. 63, S1, 2019, <https://doi.org/10.1017/S0021855319000056>.

mandates of the President of the Republic, the independence of the Judicial Power, [and] political and trade union pluralism, cannot be made the object of any constitutional revision.

- e. Madagascar, Article 163 Paragraph I
“The republican form of the State, the principle of the integrity of the national territory, the principle of the separation of the powers, the principle of autonomy of the Decentralized Territorial Collectivities, the duration and the number of the mandate of the President of the Republic, may not be made the object of revision”. Paragraph 2 “The exceptional powers held by the President of the Republic in the exceptional circumstances or circumstances of political trouble do not confer on him the right of recourse to a constitutional revision”.
- f. Guinea, Article 154
“The republican form of the State, the principle of secularity, the principle of the uniqueness [unicité] of the State, the principle of the separation and of the equilibrium of the powers, the political and syndical pluralism, the number and the duration of the mandates of the President of the Republic, may not be made the object of a revision”.
- g. Mauritania, Article 99 Paragraph 4,
No procedure of revision of the Constitution can be engaged if it jeopardizes the existence of the State or if it infringes the integrity of the territory, the republican form of the Institutions, the pluralist character of the Mauritanian democracy or the principle of democratic alternation in power and its corollary, the principle according to which the mandate of the President of the Republic is of five years, renewable one sole time, as specified in Articles 26 and 28 above.
- h. Senegal, Article 103 Paragraph 7,
The republican form of the State, the mode of election, the duration, and the number of consecutive mandates of the President of the Republic may not be made the object of a revision.
- i. Tunisia, Article 75, Paragraph 6:
....The constitution may not be amended to increase the number or the length of presidential terms.
- j. Aljazair, Article 234
No constitutional amendment shall undermine:.....the prohibition against holding more than two consecutive or discontinuous presidential terms of five years each.

Based on the explanation above, referring to Albert's opinion, the provisions on the periodization of presidential as an Unamendable Provision can be stated explicitly in the constitutional text and can be used to resolve legal issues. This is based on four main arguments. First, legal certainty. Declaring the provisions on the periodization of the presidential office as provisions that cannot be changed can provide a guarantee that there will be no attempt to increase the periodization of the presidential office either through formal procedures or other procedures because it has been stated explicitly in the constitutional text as the legal basis for state administration. Second, as a characteristic or identity of a country because the principles contained in the provisions on the periodization of the presidential term limit are fundamental principles of the constitution from the 1945 Constitution. Third, as an aspiration to create change for the better in the context of constitutionalism and legal politics of limiting power. Fourth, as a way to ensure that the provisions regarding the periodization of the presidential office have more appreciation value than other provisions efforts to change them are even more difficult.

CONCLUSION

The limitation of presidential periodization in Article 7 of the 1945 Constitution of the Republic of Indonesia can be considered an unamendable provision constructively because members of the People's Consultative Assembly (MPR), whose composition is dominated by members of majority political parties, have expressed their rejection of the idea of extending the periodization of the presidential term limit. This factor automatically influenced the power of change, namely the People's Consultative Assembly (MPR) as the authority to amend the Constitution of the Republic of Indonesia. Furthermore, the provision of presidential term limits as an unamendable provision can be explicit in the constitutional text through formal amendment procedures that can be used to resolve the question of the certainty that the Indonesian constitution adheres to the principle of limited government and that future generations must respect this basic principle.

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