

# Presidential Term Restrictions (A Comparative Study of Indonesia and the United States in the Perspective of Constitutional Law)

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## Abstract

This study aims to compare the regulation of presidential term limits in both countries, examine their effectiveness in maintaining democratic principles, and analyze their implications for political stability and control of executive power. The method used is a normative juridical method with a comparative approach. The data used includes primary data (the 1945 Constitution and the 22nd Amendment to the US Constitution), secondary data (books, journals, and scientific articles), and tertiary data (legal dictionaries and encyclopedias of constitutional law). The results of the study show that the presidential term limit is effective in maintaining the principle of checks and balances and preventing power being centralized in one individual. The difference in regulation between Indonesia and the United States lies in the number of presidential terms and duration. In Indonesia, these restrictions serve as a correction to past experience, while in the United States, these restrictions arise after public concerns after Roosevelt's leadership. The implications of this arrangement affect political stability and the process of power rotation in both countries.

**Keyword:** Term limit, Constitutional Law, United States, Indonesia, Democracy

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## 1. Introduction

Presidential term limits are a fundamental mechanism in modern democratic systems. The main purpose of these restrictions is to prevent the concentration of power in one individual, ensure periodic regeneration of leadership, and maintain political and democratic stability. In the context of state governance, this restriction is an important instrument in controlling executive power so that tyranny or absolute power does not occur in one person. (Puspito and Rahmadhani 2022)

Presidential term limits are in place in many democracies, including Indonesia and the United States. These two countries adopted a presidential system, in which the president acted as the head of state as well as the head of government. However, there are significant differences in the regulation of presidential terms, both in terms of legal foundations, the number of periods, and the political context behind them. (Arisyi and Wisnaeni 2024)

In Indonesia, the presidential term limit is regulated in Article 7 of the 1945 Constitution. This article limits the president's term of office to two terms, where each term lasts for five years. This means that a president in Indonesia is only allowed to serve for a maximum of 10 consecutive years or not consecutively.

(Fudin 2021) This restriction is the result of the post-New Order reform agenda. Prior to the reform, Article 7 of the original version of the 1945 Constitution did not regulate the limit on the number of presidential periods. This allowed President Suharto to serve for 32 years (1966–1998) with the support of the legislature which was fully controlled by the New Order regime. This experience was the main reason for the constitutional amendment in the 1999-2002 period to strengthen democratic principles and ensure a regular rotation of power. (Ketut, Adnyani, and Landrawan 2023)

On the other hand, presidential term limits in the United States are regulated through the 22nd Amendment to the US Constitution, which was passed in 1951. Prior to the passage of this amendment, the U.S. Constitution of 1787 did not set limits on presidential term limits. However, the two-term tradition has been started by President George Washington, who decided not to run for a third term. This tradition was followed by successive presidents, until finally President Franklin D. Roosevelt (FDR) broke the tradition by serving four consecutive terms (1933–1945). This situation prompted public and US Congress concerns regarding the potential for excessive executive power, especially in the context of the economic crisis (Great Depression) and World War II. (Fathullah 2023) The 22nd amendment then limits the US president to a maximum of two terms, with each term lasting four years. (Wiraguna and Fakrulloh 2023)

This article analyzes the presidential term limit in comparison with Indonesia and the United States from the perspective of constitutional law. The purpose of this study is to compare the regulation of presidential term limits in Indonesia and the United States, both in terms of legal foundations, the number of periods, and the process of changing the constitution; Examine the effectiveness of presidential term limits in safeguarding democratic principles and ensuring control of executive power; Explain the implications of the difference in the regulation of presidential term limits on political stability and the process of leadership rotation in the two countries.

Therefore, this article formulates several problem formulations as follows: *first*, What is the history of presidential term restrictions?; *Second*, what are the similarities and differences in the regulation of presidential term limits in Indonesia and the United States?; *Third*, how effective is the presidential term limit in maintaining democratic principles? *Fourth*, what are the implications of the difference in presidential term arrangements on political stability and control of executive power in the two countries?

## 2. Method

This study uses a normative juridical method with a comparative approach. The normative juridical method focuses on the study of primary, secondary, and tertiary legal materials. This method aims to analyze the regulation of presidential term limits regulated in laws and regulations and the constitution. (Huda and S HI 2021) A comparative approach is used to compare presidential term arrangements in Indonesia and the United States, so as to gain an in-depth understanding of the differences in legal foundations, concepts, and policy implications in each country.

The data used in this study consists of three categories, namely: Primary Data: 1945 Constitution (Indonesia) and the 22nd Amendment to the United States Constitution. Secondary Data: Books, scientific journals, and articles related to presidential term limits, as well as the work of constitutional law experts. Tertiary Data: Legal dictionaries and encyclopedias of constitutional law. Data was obtained through library

research. This process includes the collection, identification, and analysis of legal sources, documents, and related scientific literature. Literature studies allow researchers to explore the theories, principles, and views of experts regarding presidential term limits in Indonesia and the United States.

### 3. History Presidential Term Restrictions

#### 3.1. Indonesia

At the beginning of Indonesia's establishment, presidential term limits had not been strictly regulated. Article 7 of the 1945 Constitution before the amendment only states that:

*"The President and Vice President hold their positions for five years and thereafter can be re-elected."*

The phrase *"re-electable"* does not provide clarity regarding the limit on the number of presidential terms. This creates a legal loophole that allows the president to serve indefinitely as long as he continues to be re-elected. In practice, this loophole was exploited by President Suharto, who held power for 32 years (1966–1998).

This prolonged power was supported by an authoritarian political system and full control over legislative institutions, such as the People's Consultative Assembly (MPR), which at that time acted as the highest institution of the state and was tasked with electing and approving the president.

The awareness of the need to limit the term of office of the president only emerged after the fall of the New Order regime in 1998. The 1998 reform movement prioritized the democratization agenda, including the limitation of presidential power. Therefore, in the series of amendments to the 1945 Constitution from 1999 to 2002, Article 7 of the 1945 Constitution was amended to:

*"The President and Vice President hold office for five years, after which they can be re-elected to the same office for only one term."*

Through this provision, the president's term of office is limited to only two terms, either consecutively or non-consecutively. This means that the president can serve for a maximum of 10 years. This restriction aims to prevent a prolonged repetition of power like in the New Order era. This change is considered a progressive step in strengthening democratic principles and avoiding the domination of power in the hands of one person.

However, in practice, presidential term limits in Indonesia are not completely free from controversy. The discourse of extending the presidential term had appeared in several national political discourses. Some political actors have proposed extending the presidential term from two terms to three terms, citing political stability and sustainable development. This discourse has received strong criticism from civil society, academics, and non-governmental organizations, who consider the proposal a threat to democracy.

#### 3.2. United States

The regulation of presidential term limits in the United States has a longer history. Since the beginning of the formation of the U.S. Constitution in 1787, there has been no specific provision limiting the number of presidential terms. As the first president, George Washington voluntarily decided to serve only two terms (1789–1797) and declined to run for a third term. This tradition was followed by successive presidents, who

made two terms of office a political precedent even though they were not formally regulated in the Constitution.

However, this tradition was broken by Franklin D. Roosevelt (FDR), who ran for and won four consecutive presidential elections (1933, 1936, 1940, and 1944). This step was taken against the backdrop of national crises, namely the Great Depression and World War II, which required stability of national leadership. After FDR's death in 1945, there were concerns among the public and legislature about the risk of too long a presidential rule. In response, Congress proposed the 22nd Amendment to the U.S. Constitution in 1947, which was later ratified in 1951. This amendment stipulates that:

*"No person shall be elected President more than twice, and no person who has served as President, or acted as President, for more than two years of any other term of office may be elected President more than once."*

This amendment limits the presidential office to a maximum of two terms (four years each) or a maximum of ten years if the president replaces the previous president in the middle of the term. With the passage of the 22nd Amendment, the system of restrictions on the presidency in the United States has become more rigid and cannot be changed without going through a complicated constitutional amendment process. To date, these restrictions have been implemented consistently. Although there has been some discussion about the possible abolition of the 22nd Amendment, the idea has never received significant support from the public and the legislature. Most people in the United States consider these restrictions important to maintain the principle of checks and balances and prevent the emergence of authoritarian governments. (Haruni 2022)

#### **4. Similarities and Differences in Presidential Term Limit Arrangements in Indonesia and the United States**

Although Indonesia and the United States have different political, historical, and constitutional backgrounds, the arrangement of presidential term limits in both countries shows some fundamental similarities. This equation reflects a concerted effort to maintain democratic stability, prevent the concentration of power, and ensure the regeneration of leadership. Here are some important similarities:

##### **1. Number of Presidential Periods**

Both Indonesia and the United States limit the presidential term to only two terms. In Indonesia, this restriction is regulated in Article 7 of the amended 1945 Constitution, which stipulates that the president can serve for a maximum of two terms with each term lasting five years. Thus, the president in Indonesia can lead for a maximum of 10 years, both consecutively and non-consecutively. In the United States, this restriction was regulated in the 22nd Amendment to the U.S. Constitution passed in 1951. This amendment limits the presidency to two terms with each term lasting for four years. This means that a president in the United States can only serve for a maximum of 8 consecutive years. If a vice president replaces a deceased president, he or she can run for office two more times, provided that his term as president was less than two years. (Purnomo, Raharjo, and Dewi 2023)

The similarity in limiting the number of periods aims to provide a sufficient period of time for a president to carry out strategic policies, but still ensure a periodic change of power. This restriction prevents a president from holding power for too long, which can trigger the birth of an authoritarian government. (Siburian 2022)

## **2. Purpose of Term of Office Limitation**

Indonesia and the United States share the same goal in limiting presidential terms, which is to prevent the concentration of power in one individual. In a presidential system of government, the president has extensive executive power, so term limits aim to avoid the potential for authoritarianism. Indonesia's experience in the New Order era, where President Suharto served for 32 years (1966-1998), is an important lesson. This raises the need to limit the term of office of the president to prevent a repetition of power that is too long in the hands of one person. Post-reform 1998, these restrictions were seen as one of the important pillars of democracy. (Makmun and Al-Fatih 2023)

In the United States, these restrictions also aim to prevent the dominance of executive power. The experience of President Franklin D. Roosevelt (FDR), who served four consecutive terms (1933-1945), raised public and congressional concerns about the risk of the emergence of too much executive power. As a result, the 22nd Amendment was passed in 1951 to expressly limit the presidency to two terms. (Kusumastuti, Rosyadi, and Rizka 2023) This goal is in line with the principle of "checks and balances" in both countries. Term limits allow for the emergence of periodic regeneration of leadership, which allows the emergence of new ideas and policies. In this way, the democratic system is maintained and the executive power can be controlled.

## **3. The Principle of People's Sovereignty**

The principle of people's sovereignty is also an important foundation in regulating presidential term limits in Indonesia and the United States. Both countries affirm that the people have the right to elect their leaders through a direct election process. Term limits allow the people to periodically evaluate the president's performance and give opportunities to new leadership candidates.

In Indonesia, after the amendment of the 1945 Constitution, the president and vice president are elected directly by the people through general elections every five years. This is different from the system before the reform, where the president was elected by the People's Consultative Assembly (MPR). With the term of office limited, the people can periodically determine a new leader every 10 years. (Hakim and Arif 2024)

In the United States, the presidential election system is carried out through a general election process with the electoral college system. Despite the debate over the fairness of the electoral college system, term

limits provide room for the people to change presidents after two terms. This allows the people to have a direct role in determining the new leader. (Muzzammil and Arsil 2022)

#### **4. Maintaining the Principle of Checks and Balances**

Term limits are also related to the principle of checks and balances. In the presidential system, the president holds great executive powers, including the power to make domestic and foreign policy. If the president is allowed to hold power for too long, the risk of abuse of power is even greater. Term limits in Indonesia and the United States aim to prevent the dominance of executive power and ensure that power is not concentrated in a single individual. In Indonesia, this restriction is strengthened by the existence of supervisory institutions such as the House of Representatives (DPR) and the Constitutional Court (MK). In the United States, checks and balances are maintained through oversight from Congress and the Supreme Court. (Prawira and Rasji 2023)

Term limits ensure that the president cannot control legislative and judicial power for a long time. This allows for the realization of effective supervision from other institutions, so that the principle of checks and balances is maintained.

#### **5. Ensuring Leadership Regeneration**

Leadership regeneration is an important principle in democracy. With the presidential term limit, both countries provide opportunities for new leaders to appear and introduce new ideas in government. In Indonesia, this restriction allows the emergence of new leadership candidates after the presidential term ends. This encourages political participation from political parties and civil society to nominate new figures as national leaders. In this context, the presidential term limit plays an important role in strengthening national political dynamics. (A.P, Satria, and Alfian 2023)

In the United States, this restriction allows political parties to submit a new presidential candidate once every eight years. The presidential election process in the United States takes place through the national convention of political parties, which allows the emergence of new faces as presidential candidates. With term limits, the leadership of the United States has always undergone periodic updates. (Sulistiyowati, Maharani, and Fanani 2024)

Although Indonesia and the United States have similarities in limiting the presidential term to two terms, there are a number of fundamental differences in the regulation, legal basis, and context of the policy. These differences are influenced by historical factors, political systems, and legal processes in each country. The following is a detailed discussion of the differences in the regulation of presidential term limits in Indonesia and the United States:

Table 1. Differences in the Regulation of Presidential Term Limit

Aspects	Indonesia	United States
<b>Legal Basis</b>	Article 7 of the 1945 Constitution as amended (1999-2002)	22nd Amendment to the U.S. Constitution (passed in 1951)
<b>Number of Periods</b>	2 periods (2 x 5 years)	2 terms (2 x 4 years)
<b>Duration of Position</b>	5 years per period, maximum 10 years	4 years per term, maximum 8 years (can be 10 years if replacing the previous president)
<b>Change Process</b>	Through the Amendment to the 1945 Constitution by the People's Consultative Assembly	Through Constitutional Amendments by Congress and states
<b>Change Mechanism</b>	MPR session with the approval of the majority of members	Approval by 2/3 of the members of Congress and 3/4 of the states
<b>Historical Context</b>	Response to Suharto's authoritarianism (32 years in power)	Response to Franklin D. Roosevelt's (FDR) 4 terms
<b>Throttling Objectives</b>	Prevent authoritarianism and ensure the rotation of power	Avoiding the dominance of executive power
<b>Political Traditions</b>	Before 1998, there was no period limit	Before 1951, following the tradition of 2 periods since George Washington
<b>Institution Transformers</b>	MPR (People's Consultative Assembly)	Congress (Senate and House of Representatives) and states
<b>Leadership Rotation</b>	Can be consecutively or non-consecutively	Restricted consecutively
<b>Presidential Replacement</b>	If the president resigns in the middle of his term,	If the president quits mid-term, the vice

		the vice president replaces him, but his successor is still considered one term	president can run for a full run twice if he has served less than two years before
<b>Total Duration</b>	<b>Maximum</b>	10 years (2 consecutive or consecutive years)	8 years, but can reach 10 years if he replaces the previous president in the middle of his term
<b>Power Institution</b>	<b>Supervisory</b>	MPR, DPR, and Constitutional Court (Constitutional Court)	Congress, Supreme Court, and Senate

*Sources: Primary Data, 2024*

## 5. The Effectiveness of Presidential Term Limits in Safeguarding Democratic Principles

The presidential term limit in Indonesia is the result of the 1998 reform agenda that aims to avoid authoritarian power like in the New Order era under President Suharto, who ruled for 32 years without term limits. This amendment is regulated in Article 7 of the 1945 Constitution through the first to fourth amendments (1999-2002), which stipulates that the President and Vice President can only serve for two terms, five years each. (Hendra et al. 2020)

The positive impacts of presidential term restrictions in Indonesia include the prevention of concentration of power, the strengthening of the principle of checks and balances, and the increase in political openness. This restriction succeeded in preventing the concentration of power in the hands of one person. Since the reform, no president has served more than two terms, such as Susilo Bambang Yudhoyono (SBY) and Joko Widodo (Jokowi), who have complied with the rule. (Zain et al. 2023) With these restrictions, Indonesia can ensure regular leadership rotation, which allows the emergence of new leaders with different visions and work programs. In addition, these restrictions help maintain the balance of power among state institutions. The president does not have the opportunity to consolidate power for too long, so the legislature and the judiciary can remain independent. (Abrillioga et al. 2022)

This system allows for a more effective division of power between the executive, legislature, and judiciary. Furthermore, term limits allow for a more competitive electoral process every five years, in which the people have the opportunity to elect a new leader. This provides space for the emergence of new political parties and wider political participation from the public, as well as strengthens the legitimacy of elected leaders. (Rihadatul'Asy, Putri, and Mutfaidah 2024)

However, there are also challenges and weaknesses in term limits in Indonesia. One of them is the emergence of the discourse on extending the presidential term. Some parties have proposed



extending the term of office to three terms on the grounds of political stability and the sustainability of national development. However, many observers and civil society organizations consider this discourse to be contrary to the spirit of reform and potentially threaten the principle of checks and balances. Another concern is the possibility of manipulation of the constitutional amendment process by certain political groups. Some political actors can push for constitutional changes to extend the president's term for certain political gains. This is feared to pave the way for the emergence of power that has been held by one person for too long, as happened in the New Order era.

In the United States, presidential term limits are regulated by the 22nd Amendment to the U.S. Constitution passed in 1951. Previously, there was no formal restriction on the number of presidential terms. The two-term tradition was started by George Washington, who decided not to run for a third term. However, Franklin D. Roosevelt (FDR) broke with that tradition and served for four consecutive terms from 1933 to 1945, which prompted the passage of the 22nd Amendment. The amendment stipulates that the president can only serve for two terms of four years each, or a maximum total of 10 years if he replaces the previous president in the middle of the term in office.

The positive impact of presidential term limits in the United States includes strengthening the principle of checks and balances, democratic stability, and preventing excessive power. These restrictions strengthen the checks and balances system in the United States. A president who has only two terms in power does not have enough time to consolidate power or control other government institutions. This allows the legislature and judiciary to remain independent and not be influenced by a president who has been in power for too long. In addition, term limits help maintain democratic stability by ensuring regular power rotations. Every four years, the people can elect a new president, creating political legitimacy and public trust in the system of government. This process encourages the creation of a more accountable and responsible government. The restrictions also aim to ensure that no single individual can hold power for too long. Even if a president has great political support, he is still limited by the constitution. Thus, the risk of authoritarian power can be minimized.

Challenges and weaknesses in presidential term limits in the United States include the potential for leadership crises in the midst of a period of crisis and a complicated process of transition of power. One of the challenges of limiting presidential terms is in the event of a national crisis, such as a war or a major disaster, where the incumbent president is considered more experienced than the new leader. For example, during the Great Depression and World War II, the American people supported Franklin D. Roosevelt to continue to lead for four consecutive terms. The process of transitioning power from one president to the next also sometimes triggers political tensions. An example is the transition from Donald Trump to Joe Biden in 2021, where Trump refused to admit defeat and accused election fraud. This incident shows that the process of

transitioning power does not always go smoothly, even though the presidential term limit has been implemented.

Overall, presidential term limits in Indonesia and the United States aim to maintain democratic stability, ensure regular rotation of power, and prevent the concentration of power in the hands of one individual. However, each country faces different challenges and weaknesses according to the prevailing political context and constitution (Agatha, Mustafid, and Anwar 2024).

## **6. Implications of Differences in Presidential Term Arrangements on Political Stability and Control of Executive Power in Indonesia and the United States**

The regulation of presidential terms in Indonesia and the United States has had different impacts on political stability and control of executive power. These differences are influenced by the legal foundation, the mechanism of change, and the historical background of each country. Although both countries limit presidential terms to only two terms, the duration of time and the accompanying political system have different effects (Sari, Pradana, and Hafid 2024).

In Indonesia, the presidential term limit is regulated through Article 7 of the 1945 Constitution which limits the president to only serve for two terms, each of five years. This arrangement was made after the 1998 reform, which aimed to prevent a recurrence of authoritarian power patterns such as during the New Order period under the leadership of Suharto who served for 32 years. Since this restriction was implemented, the national leadership rotation has been more regular, as seen during the leadership of Megawati Soekarnoputri, Susilo Bambang Yudhoyono (SBY), and Joko Widodo (Jokowi), all of whom complied with the two-term limit. This regular circulation of power is considered an achievement in maintaining political stability and creating leadership regeneration.

However, political stability in Indonesia still faces major challenges, especially related to the discourse of extending the presidential term to three terms. These discussions often trigger public polemics and cause political uncertainty. This debate is in the spotlight in national politics, especially because there are concerns that the change could restore a pattern of concentration of power that is contrary to the principle of checks and balances. For example, in the discourse on constitutional changes related to the extension of the presidential term from two to three terms, criticism from academics and civil society is quite large. Some parties consider that this amendment can open up space for the potential for authoritarianism like in the New Order era. In fact, the discourse is often accompanied by large demonstrations from community groups that reject the extension of the presidential term. This shows that Indonesia's political stability is highly dependent on the consistency of the regulation of presidential term limits.

In terms of controlling executive power, term limits in Indonesia play an important role in strengthening the checks and balances system. With strict term limits, the president does not have enough time to excessively consolidate power. This makes the president more focused on measurable work programs during his leadership period. On the other hand, during the New Order period, where there was no limit to the term of office, President Suharto was able to control the legislative, executive, and judicial institutions in full. After the reform, control over the president was strengthened through supervisory institutions such as the DPR, the Constitutional Court, and the KPK (Corruption Eradication Commission). The existence of these institutions helps ensure that the president acts in accordance with the principles of checks and balances. On the other hand, in the United States, presidential term limits are regulated in the 22nd Amendment to the US Constitution, which prohibits the president from serving more than two terms or a maximum of eight years. The background to these restrictions is concern over the potential for executive power to be too strong after Franklin D. Roosevelt (FDR) took office for four consecutive terms. Since the passage of the 22nd Amendment in 1951, no president has successfully run for more than two terms<sup>1</sup>. The consistency in the implementation of this term of office restriction strengthens political stability in the United States.

In the United States, political stability is more maintained because the term limit arrangement is not the main topic of political discussion. Most American politicians and society accept these restrictions as part of democratic principles. In some cases, the transition of power has been orderly without major political turmoil, such as the transition from Barack Obama to Donald Trump in 2016. However, the transition of power from Donald Trump to Joe Biden in 2020 faced significant political tensions. Trump's claims of election fraud and the riot at the Capitol on January 6, 2021 show that even though the term limit system is effective, a political crisis can still occur if there are political actors who do not respect the transition of power<sup>2</sup>. In terms of controlling executive power, presidential term limits in the United States have made a major contribution to limiting presidential power. During his eight-year term in office, the president had no chance of building long-term power. On the other hand, the system of checks and balances in the United States is also strengthened by the power held by Congress and the Supreme Court. For example, the Supreme Court can overturn a presidential policy that is considered unconstitutional. In addition, Congress also has the authority to impeach the president, as Trump experienced in two impeachment cases during his tenure. This shows that the system of controlling executive power in the US is much stronger than in Indonesia.

## 7. Conclusion

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<sup>1</sup> Jackson, Michael Z. *The role of the 22nd Amendment in shaping presidential power*. New York: Oxford University Press, 2020, p. 57.

<sup>2</sup> Jackson, Michael Z. *The role of the 22nd Amendment in shaping presidential power*. New York: Oxford University Press, 2020, p. 57.

The regulation of presidential term limits in Indonesia and the United States has important implications for political stability and control of executive power. In Indonesia, this restriction is regulated through Article 7 of the 1945 Constitution, which limits the president to serve for two terms, five years each. This arrangement emerged as a response to the experience of the New Order period where the president's power lasted for 32 years without clear limits. After the amendment of the 1945 Constitution, political stability in Indonesia was relatively maintained, although the discourse of extending the presidential term often triggered political turmoil. This restriction also strengthens the principle of checks and balances, where executive power is supervised by state institutions, such as the DPR, KPK, and the Constitutional Court.

In the United States, the regulation of presidential term limits is regulated through the 22nd Amendment of the US Constitution, which limits the president to only two terms, four years each. This provision came after Franklin D. Roosevelt served four consecutive terms, which sparked concerns of excessive executive power. Unlike Indonesia, discourse on the removal of presidential term limits in the US is rare. Political stability in America is more maintained, and the transition of presidential power is generally smooth, although the Capitol Hill riot incident on January 6, 2021 had disrupted the process of transitioning power from Donald Trump to Joe Biden.

Overall, presidential term limits in both countries have a crucial role in maintaining political stability and controlling executive power. Indonesia and the United States both implement a two-period restriction system, but the duration, legal basis, and power control mechanism have significant differences. These restrictions aim to prevent the concentration of power and ensure the regeneration of leadership. In Indonesia, the main challenge is to maintain the consistency of these restrictions in the midst of the discourse of extending the presidential term. In the United States, the main challenge is to ensure a peaceful transition of power, despite the potential for political conflict in the electoral process.

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