

BUKTI KORESPONDENSI

ARTIKEL JURNAL INTERNASIONAL BEREPUTASI

Judul artikel : CONSTITUTIONAL POSTPONEMENT OF THE 2024 GENERAL ELECTION
IN THE INDONESIAN STATE SYSTEM
Jurnal : Russian Law Journal, Vol. XI Issue No. 3 (2023)
Penulis : Askari

No.	Perihal	Tanggal
1.	Bukti konfirmasi submit artikel dan artikel yang disubmit	26 April 2023
2.	Bukti konfirmasi review dan artikel diterima	29 April 2023
3.	Bukti konfirmasi artikel untuk publish dan copyright	7 Mei 2023
4.	Bukti konfirmasi artikel sudah dipublish online	11 Mei 2023

1. Bukti konfirmasi submit artikel dan artikel yang disubmit
(26 April 2023)



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[RLJ] Submission Acknowledgement

2 messages

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Wed, Apr 26, 2023 at 12:39 PM

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Thu, Apr 27, 2023 at 6:51 PM

Thank you for your response.

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CONSTITUTIONAL POSTPONEMENT OF THE 2024 GENERAL ELECTION IN THE INDONESIAN STATE SYSTEM

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Abstrak

The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections held every 5 (five) years and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution. This becomes the primary argument in reviewing the constitutionality of postponing the 2024 General Elections in the Indonesian State Administration System. Postponement of General Elections as regulated in Law no. 7/2017, which basically regulates the existence of a an advanced general election and a follow-up general election. The follow-up general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election so that the follow-up general election and the follow-up general election do not include a postponement of the general election outside the stages of holding the general election. Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution.

Keywords: general election, postponement, advanced general election, follow-up elections, amendment.

Introduction

Post-reform Indonesia experienced a turning point in evaluating the application of the principle of popular sovereignty, which was considered minimal during the Old Order and New Order regimes. This was marked by changes to the body of the 1945 Constitution, especially in the articles that specifically regulate the strengthening of the presidential system in Indonesia.¹ Indirectly, strengthening the presidential system as

¹ Saldi Isra, *Pergeseran Fungsi Legislasi, Memperkuat Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta, 2013, hal. Xix dan 3.

agreed by the MPR at the beginning of the 1945 Constitution Amendment process will affect the procedures for selecting the President and Vice President, that in implementing a presidential system, the President is responsible to the people directly and not through the MPR.² Through this momentum, Indonesia underwent a system transformation from previously electing the President and Vice President by the MPR (indirect democracy) to selecting the President and Vice President directly by the people (direct democracy). The momentum of the shift in the general election system does not necessarily reduce constitutional problems in Indonesia.

The general election, constitutionally stated in Article 22E paragraph (2) of the 1945 Constitution, confirms that "General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council." General elections (Pemilu), which are held by a national, permanent, and independent election commission and are held every five years, are a form of circulation of the giving of new mandates by the people to their representatives in the Legislature and to the President and Vice President as a manifestation of popular sovereignty. After the post-reform reform, the general elections were held 5 (five) times, namely in 1999, 2004, 2009, 2014, and 2019.

Regarding the implementation of the next general election, which will be held in 2024, it is colored by the discourse of postponement. The Minister of Investment, Bahlil Lahadalia, voiced the discourse on postponing the General Election as intended and expressed business people's aspirations to postpone the General Election. In addition, this discourse was again voiced by political parties, namely the National Awakening Party (PKB), the National Mandate Party (PAN), and the Golongan Karya Party (Golkar), on the pretext that Indonesia's economy has not been stable due to the pandemic. As is well known, the holding of the 2024 general election was previously jointly agreed upon by Commission II of the DPR RI, the Ministry of Home Affairs of the Republic of Indonesia, the General Election Commission, and the General Election Supervisory Body, which was set to be held on February 14, 2024.

² Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2010, hal. 62-63.

The discourse on postponing the general election then strengthened when the decision on the lawsuit 757/Pdt.G/2022, which was filed on December 8, 2022, at the Central Jakarta District Court (PN Jakpus) which granted the Prima Party's lawsuit, ordered the KPU to postpone the general election. "Punish the Defendant not to carry out the remaining stages of the 2024 General Election since this decision was pronounced and to carry out the General Election stages from the beginning for approximately 2 (two) years 4 (four) months, 7 (seven) days," reads the fifth dictum of the decision.³

The postponement of general elections in Indonesia is not a new thing. After the 1945 Constitution was formed after Indonesian Independence, general elections were planned in 1946. This failed because the Act was still being drafted, and state security at that time was also unstable. The first general elections could only be held on September 29, 1955, to elect members of the DPR and on December 19, 1955, to elect members of the Constituent Assembly based on the 1950 Constitutional Constitution and based on Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.⁴ After the 1955 general election, which should have been held in 1959, it was postponed to 1960 due to state security reasons. General elections were held again on July 5, 1971, after the 1945 Constitution was re-enforced based on the MPRSXLII/MPRS/1968 Decree concerning Amendments to MPRS Decree No. XI/MPRS/1966 mandates that general elections be held no later than July 5, 1971.⁵

The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections, which are held every 5 (five) years, and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution itself.

Based on this, the researcher, in this case, is interested in discussing the constitutionality of the postponement of the 2024 general election with the title "Constitutional Postponement of the 2024 General Election in the Indonesian State

³ <https://makassar.tribunnews.com/2023/03/02/dosen-hukum-tata-negara-umi-tidak-bisa-putusan-pn-jakpus-tunda-pemilu-2024?page=2>. Diakses pada tanggal 120 Maret 2023

⁴ Janedjri M. Gaffar, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta, 2013, hal. 100.

⁵ Fritz Edward Siregar, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta, 2019, hal. 11.

Administration System". The formulation of the problem raised in this Research Journal is What is the Constitutional Postponement of the 2024 General Elections based on the Indonesian State Administration System?

Discussion

1. Democracy and General Elections

Constitutional democracy emerged as a program and a concrete political system at the end of the 19th century. Constitutional democracy had already developed in Western Europe in the 15th and 16th centuries. If traced far back, we can already find the idea of democracy in the 6th to 3rd centuries BC, namely in the form of direct democracy (direct democracy) applied (city-state).⁶

In order to realize political rights effectively, the idea arose of limiting government power with a written and unwritten constitution. This constitution is not only a document that reflects the division of powers among state institutions (executive, legislative and judicial), but also determines and limits the powers of the government on the one hand and the other hand, guarantees the rights of its citizens.⁷

The hallmark of constitutional democracy is the idea that a democratic government is a government that has limited power and is not justified in acting arbitrarily against its citizens. Restrictions on government powers are laid down in the constitution. Therefore, it is often called government based on the constitution (constitutional government). So, constitutional government is the same as limited government or restricted government. In addition, power is divided so that opportunities for abuse are minimized, namely by handing it over to several people or bodies and not concentrating government power in one hand or one body. The juridical formulation of these principles is known as the *rechtstaat* (the rule of law) and the rule of law.⁸

The primary conditions for the implementation of a democratic government under the rule of law are:⁹

⁶ Topo Santoso dan Ida Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta, 2019, hal. 6.

⁷ *Ibid*, hal.7-8.

⁸ *Ibid*, hal. (107).-108.

⁹ *Ibid*, hal. 116

- a. Constitutional protection, in the sense that apart from guaranteeing individual rights, the constitution must also determine procedural ways to obtain protection for guaranteed rights;
- b. An independent and impartial tribunal;
- c. Free general elections;
- d. Freedom of expression;
- e. Freedom of association/organization and opposition;
- f. civil education.

Democracy is a government system based on people's sovereignty and realized by a government based on people's representatives, whose power and authority come from and are exercised through people's representatives and are fully responsible to the people. Therefore, democracy requires general elections to elect the people's representatives and must be held periodically in a free, secret, honest, and fair manner.¹⁰

Elections as one of the main pillars of a democratic government are properly holding general elections, but democracy is not the same as general elections. Even though elections are only one aspect of democracy, democratic elections are an important requirement in the administration of a democratic state. Elections in democratic theory are the link between the principle of popular sovereignty and the practice of governance by a few officials. Citizens elect their leaders, and it is through them that daily substantive issues are decided.¹¹

General elections are a state mechanism for selecting state leaders (executive) and members of parliament (Legislature). The quality and routine of holding general elections will determine the level of democracy in a country.¹² Because general elections are a consequence of a democratic country, general elections are the most basic form of political participation of the people or citizens to determine the government and programs that are in accordance with their wishes, at least the government or programs that they

¹⁰ Abdul Mukhtie Fadjar, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang, 2016, hal. 60.

¹¹ Liddle R. William, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta, 1992, hal. 32.

¹² Denny Indrayana, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta, 2019, hal. 25.

can accept.¹³ The general election is a concept of procedural democracy and also one of the strongest ways for the people to implement contemporary democracy.¹⁴

The function and purpose of the general election itself is to ensure that there is a limitation of power, especially in the aspect of limits of power, namely the limitation of power so that a person or group of people does not hold positions of power in a country for an unlimited time. The absence of power restrictions from the limit of power aspect not only creates incumbents who are not evaluated but also has the potential to make incumbents grow into tyrannical and authoritarian rulers, which in turn triggers the use of methods outside the constitution stop tyrannical or authoritarian practices.

The experience of the New Order rulers, who have been in power for more than thirty years, has become an important democratic lesson about how unclear the use of limits of power in the administration of state power must end in extra-parliamentary coercion by the people. The same experience also occurred when President Soekarno was in power through MPRS Decree No. III/MPRS/1963, which stated that President Soekarno was in power for life, was the reason that triggered mass protests and people's demonstrations to end Soekarno's rule.

Postponement of General Elections cannot be separated from democracy. This is because general elections are the embodiment of democracy. One of the core pillars of democracy in general elections. Because without general elections, democracy will only be pseudo. Therefore, it is very inappropriate to talk about General Elections without discussing the essence of democracy.¹⁵ Democratic elections, Jeane Kirkpatrick proposed the limits of democratic elections, namely, "democratic elections are not just symbols ... but elections that are competitive, periodic, inclusive and definitive. Where the main

¹³ Sodikin, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi, 2014, hal. 3-4.

¹⁴ Widyana, M. R., & Fikriansyah, A. (2021). Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections. *Jurnal Adhyasta Pemilu*, 4(2), 52-65. <https://doi.org/10.55108/jap.v4i2.48>

¹⁵ Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>

decision-makers in government are elected by the people who enjoy broad Freedom to criticize the government and offer alternatives."¹⁶

2. Implementation of General Elections in Indonesia

Concerning the history of the constitutional history of the Unitary State of the Republic of Indonesia, specifically arrangements at the level of the constitution, new general elections are stated explicitly in Article 35 of the 1950 Provisional Constitution, which states that "the will of the people is the basis of the ruler's power; This will is expressed in periodic elections that are honest and carried out according to the right to vote that are general and equal, as well as secret voting or according to a method that also guarantees Freedom of expression.

However, the general election was carried out after the fundamental law had been replaced by the United Republic of Indonesia Constitution (KRIS) and the UUDS. National elections could only be held in 1955, with the legal basis used was Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.

The general election was aimed at carrying out the orderly life of the nation as stipulated by Pancasila and the 1945 Constitution, as well as the ideals of the Proclamation of Independence and legislation on August 17, 1945. During the New Order era, six general elections were held: the 1971 general election, 1977, 1982, 1987, 1992, and 1997. When viewed from the aspects of the system, organizers, validation, violations, and settlement, no significant differences were found from the six implementations of the general election. The mandate and principles for organizing general elections during the New Order era were outlined in the MPRS Decree No. XI/MPRS/1966 concerning General Elections and MPRS Decree No. XXII/MPRS/1966 concerning Party/Organism and Employment. To implement the MPRS Decree on General Elections, Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body (UU No. 15/1969) was formed. This law later became the basis for implementing the 1971 General Election held on July 5, 1971.

¹⁶ Harimurti, Y. W. (2022). Penundaan Pemilihan Umum dalam Perspektif Demokrasi. *RechtIdee*, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.

The second general election during the New Order era was the general election held in 1977. Regarding implementing the general election, Law no. 15/1969 was amended by Act 5 of 1975 (UU No. 5/1975). Apart from that, Government Regulation Number 1 of 1976 was also issued regarding the Implementation of Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. The 1977 general election was held on May 2, 1977.

The third general election during the New Order era was held 1982 on May 4, 1982. To implement the 1982 general election, changes were made to the General Election Law through Law Number 2 of 1980 concerning Amendments to the Law. Law Number 15 of 1969 concerning General Election for Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. Further provisions regarding implementing the 1982 general election are regulated in Government Regulation 41 of 1980 concerning implementing the Election Law general.

The fourth general election during the New Order era was the 1987 general election. To carry out the 1987 general election, amendments to the general election law were made through Law No. 1 of 1985, and a new Government Regulation was formed, namely Government Regulation No. 35 of 1985. The general election was held on April 23, 1987.

The fifth general election in the New Order era was the 1992 general election. In the 1992 general election, there was no change in the general election law. Changes occur in Government Regulations, regulated in Regulation 37 of 1990. Provisions for Amendments in these Government Regulations concern editorial and technical issues; while related to systems, organizers, violations, and resolution of violations and disputes, the provisions are still subject to the previous general election.

The last general election during the New Orde era was 1997. In the 1997 general election, there were no changes to the public election law, namely Law no. 15/1969, as last amended by Law Number 1/1985. Changes occurred in the implementation provisions, namely in Government Regulation Number 74 of 1996 concerning Amendments to Government Regulation Number 35 of 1985 concerning the

Implementation of the General Election Law as amended several times, most recently by Government Regulation Number 10 of 1995.

To meet the demands for reform, which had overthrown the power of the New Order and resolved the constitutional crisis, the 1998 MPR Special Session was held. One of the outcomes of the MPR Special Session was MPR Decree Number X/MPR/1998 concerning Principles of Development Reform in the Context of Saving Normalization of National Life as the Direction of the State. This decree mandates general elections in June 1999 at the latest.

To carry out the 1999 general elections, Law Number 3 of 1999 concerning General Elections was formed. The law emphasizes that general elections are a means of implementing people's sovereignty which is held in a democratic, transparent, honest, and fair manner by holding direct, general, free, and secret voting.

The second general election in the reform era was held in 2004. The policy outline for implementing the 2004 general election is contained in the MPR Decree Number IV/MPR/2009 concerning the Outline of State Policy for 1999-2004. The Policy Direction in the Political Sector stipulates that a democratic general election system and implementation will be developed. General elections will be conducted highly with the broadest possible public participation. The laws formed as the basis for implementing the 2004 general election were Law Number 12 of 2003, concerning the General Election of Members of the DPR, DPD, and Law Number 23 of 2003, concerning the President and Vice President.

The third post-reform general election was the 2009 general election which was held based on Law Number 10 of 2008 concerning the General Election of Members of the DPR, DPD, and DPRD, as well as Law Number 42 of 2008 concerning the General Election of the President and Vice President. In the next general election, namely the 2014 general election, Law Number 8 of 2012 was stipulated concerning the General Election of Members of the DPR, DPD, and DPRD.

For the implementation of the next general election which will be held in 2019, where the implementation is based on Law Number 7 of 2017 concerning General Elections. The law is a development in the implementation of General Elections in Indonesia. The law is a development in arranging provisions related to general elections.

The requirements for implementing General Elections for the DPR, DPD, and DPRD are united with the provisions for implementing the President's and Vice President's General Election. The 2019 general election was the start of the implementation of the simultaneous general elections for members of the DPR, DPD, and DPRD, as well as the general election of the President and Vice President.

3. Constitutional Postponement of General Elections in the State Administration System in Indonesia

They are entering the next general election, which will be held in 2024, where issues arise that a postponement of the general election will arise. Regarding this issue, the Minister of Investment, Bahlil Lahaladia voiced it for the first time during a Working Meeting with Commission VI of the DPR on January 31, 2022. Bahlil Lahaladia stated that according to the survey, the level of satisfaction with President Jokowi reached 70% (seventy percent) and combined expectations of entrepreneurs and reasons for stability. That advancing and postponing general elections in this nation is not prohibited, given the conditions of the acceleration of the 1999 general election due to the post-reform crisis, so there is room to consider carrying out the process for the 2024 general election to be postponed.¹⁷

Muhaimin Iskandar, the National Awakening Party (PKB) chairman, reiterated the idea of postponing the General Election. Muhaimin Iskandar stated that the idea of postponing the general election could be carried out within one year and a maximum of two years as part of providing certainty to business actors who give a positive trend to Joko Widodo's government as well as positive and undisturbed economic prospects as a result of the general election. This idea was then positively welcomed by Airlangga Hartato as Chair of the Golongan Karya Party (Golkar) and Zulkifli Hasan as Chair of the National Mandate Party (PAN).¹⁸

Departing from the idea of postponing the implementation of the 2024 General Elections, this has led to discourse in the Indonesian constitutional system, especially regarding the general election system in Indonesia. The postponement of the General

¹⁷ Dikutip dari <https://www.bbc.com/indonesia/indonesia-60561290>, Diakses pada Tanggal 28 Maret 2022.

¹⁸ *Ibid.*

Election itself in the Indonesian general election system occurred at the beginning after the 1945 Constitution was formed. General elections were planned for 1946, but this did not happen because the implementing law was still in the drafting process and the state's security conditions at that time were also unstable. The first general election could only be held in 1955 based on the 1950 UUDS Constitution. The implementation of the 1962 General Election was again postponed in 1966 and in 1968. The 1968 General Election plan was postponed again, and in the end, the General Election could be held in 1971. The General Election spanning five years only occurred after the Election public in 1971.

Apart from the postponement of the general elections that occurred in Indonesia, general elections were brought forward, namely after the 1997 general elections. New policies and public pressure to carry out reforms, one of which is related to general elections. The general election referred to was held in 1999. After the 1999 general election, the implementation of the post-reform five-year general election system began, namely, 2004, 2009, and 2014 general elections and the 2019 general elections.

The constitutional implementation of General Elections in Indonesia is regulated in the 1945 Constitution. Based on Article 22E of the 1945 Constitution states that:

- 1) General elections are held directly, publicly, freely, confidentially, honestly, and somewhat every five years.
- 2) General elections are held to elect members of the People's Legislative Council, the Regional Representatives Council, the President and vice president, and the Regional People's Representative Council.
- 3) Participants in the general election to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly are political parties.
- 4) Participants in the general election to elect members of the Regional Representatives Council are individuals.
- 5) A national, permanent, and independent election commission holds general elections.
- 6) Further provisions regarding general elections shall be regulated by law.

In addition, the technical provisions for implementing Indonesian general elections are regulated in Law Number 7 of 2017 concerning General Elections (UU No. 7/2017),

which is based on Article 167 paragraph (1) of Law No. 7/2017 which states that general elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years. Regarding the understanding of the postponement of the General Election itself, when referring to the provisions of Law no. 7/2017, it can be assumed that the law regulates general elections and subsequent general elections, which can be assumed as part of the interpretation of the postponement of general elections by the law. Follow-up general elections and follow-up general elections, as stipulated in the provisions of Articles 431, 432, and 433 of Law no. 7/2017, which states:

Article 431

- 1) If in part or all of the territories of the Unitary State of the Republic of Indonesia, there are riots, security disturbances, natural disasters, and other disturbances which result in part of the stages of holding general elections being unable to be carried out, a follow-up general election shall be held.
- 2) The holding of the general election, as referred to in paragraph (1), starts from the stage where the general election is held.

Article 432

- 1) If a part or all of the territory of the Unitary State of the Republic of Indonesia experiences riots, security disturbances, natural disasters, or other disturbances which result in the impossibility of all stages of holding general elections, a follow-up general election shall be held.
- 2) Follow-up general elections are carried out for all stages of the general elections.

Article 433

advanced general elections and follow-up general elections are held after stages are delayed in implementing general elections.

- 1) Penetapan tertundanya pelaksanaan Pemilihan umum dilakukan oleh:
 - a. Regency/Municipal KPU on the recommendation of the PPK if the delay in holding the General Election covers one or several Sub-Districts/Villages;
 - b. Regency/Municipal KPU on the recommendation of the PPK if the General Election is postponed covering one or several Districts;

- c. Provincial KPU on the recommendation of Regency/Municipal KPU if the General Election is delayed by covering one or several Regencies/Cities; or
 - d. KPU on the recommendation of the Provincial KPU if the continuation or follow-up General Election implementation covers one or several Provinces.
- 2) If the General Election, as referred to in Article 431 paragraph (1) and Article 432 paragraph (1), cannot be held in 40% (forty percent) of the Provinces and 50% (fifty percent) of the number of registered voters nationally may exercise their right to vote, the President determines whether the President shall carry out a follow-up general election or follow-up general election at the suggestion of the KPU.
 - 3) Further provisions regarding the procedure and time for holding the advanced general election or follow-up general election are regulated in KPU Regulations.

Based on the understanding regarding the postponement of general elections in the form of advanced general elections and follow-up general elections as stipulated in the provisions of the General Election Law, in essence, it is a delay that occurs in the stages of holding general elections that have previously been determined, especially in the organic regulations of the General Election Commission as organizer Election techniques. The stages of the general election as referred to when referring to the stages of holding the general election in the 2019 general election are regulated in Article 3 of KPU Regulation Number 7 of 2017 concerning Stages, Programs, and Schedules for the 2019 General Election, including:

- a. Socialization;
- b. Program and budget planning as well as preparation of implementing regulations for holding general elections;
- c. Updating voter data and compilation of voter lists;
- d. Registration and verification of General Election Participants;
- e. Determination of General Election Participants;
- f. Determination of the number of seats and Determination of constituencies;
- g. Nomination of President and Vice President as well as Members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD;
- h. Election campaign period;
- i. Quiet period;

- j. Voting and counting of votes;
- k. Determination of general election results;
- l. Taking the oath/pledge of the President and Vice President and Members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD.

Apart from being related to the stages of holding general elections, advanced general elections and follow-up general elections, as stipulated in the general election law, are based on circumstances so that the stages of holding general elections as referred to cannot be continued for stages that have been halted for general elections. Advanced elections and all stages of holding general elections for follow-up general elections include conditions where there are riots, security disturbances, natural disasters, or other disturbances.

Regarding the conditions referred to above, if referring to the 2020 Regional Head Elections (Pilkada), advanced Pilkada will be applied. The advanced Pilkada was carried out by continuing the stages of holding the Pilkada, which were postponed then. The 2020 Pilkada Continuation was carried out based on the Regulation instead of Law (Perpu) issued by the President, which was then promulgated through Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations Substitute Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become law. The circumstances that compelled the Continuation of Regional Elections to be carried out were due to the Non-Natural Disaster Conditions Corona Virus Disease 2019 (Covid-19).

As the discourse on the postponement of general elections for the 2024 general election is currently developing, basically, it cannot be linked to the postponement of general elections as stipulated in the provisions of the general election law, namely in the form of advanced general elections and/or follow-up general elections. This is not related because the stages of holding the 2024 general election have not been carried out, referring to the absence of implementation of the stages of holding the 2024 general election carried out by the KPU and the absence of KPU organic provisions governing the stages of holding the 2024 general election. So the discussion on the postponement of the 2024 general election is a discourse on the postponement of the general election outside the stages of holding the 2024 general election.

Regarding the postponement of the general election outside the stages of holding the general election, in essence, it is not regulated in the provisions of laws and regulations, so it can be stated that the postponement of general elections outside the stages of holding the general election does not have mechanisms and other legal instruments. To present mechanisms and legal instruments for postponing general elections outside the stages of organizing general elections, especially in the 2024 general elections, this can be done through the presence of government regulation in lieu of law or through amendments to the 1945 Constitution.

The Perppu is a statutory regulation stipulated by the President, where the content of the Perpu is the same as the content of the law. However, the clause "forced emergency matters" which is a criterion for the President's subjectivity (*noodverordening-streicht van de President*). The Perppu, as stipulated in Article 22 of the 1945 Constitution of the Republic of Indonesia, states that in the event of a pressing emergency, the President has the right to issue a Government Regulation in lieu of a Law, that Government Regulation must obtain the approval of the DPR in the next trial. What is meant by the next trial is the trial period of the DPR, in which there is only one recess period.¹⁹

Regarding matters of compelling urgency, based on the Decision of the Constitutional Court Number: 138/PUU-VII/2009, it states that a Perppu is needed if:

1. There is a situation, namely an urgent need to resolve legal issues quickly based on the law;
2. The required law does not yet exist, so there is a legal vacuum, or there is a law, but it is not sufficient;
3. This legal vacuum cannot be overcome by making laws in the usual manner because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Based on this, if the issuance of the Perppu is linked to the discourse of postponing the 2024 General Elections, then it is necessary to interpret the presence of the Perppu itself as a regulation of circumstances of urgency that compel so that the 2024 General Elections should be postponed. Indonesia's current condition has no clear precarious

¹⁹ Padmo Wahyono, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta, 1994, hal. 132.

conditions, so a Perppu is needed, especially regarding the 2024 general election. The voting stages for the General Election will be held on Wednesday, February 14, 2024. The KPU as the technical executor of the 2024 General Election, has issued KPU Decree Number 21 of 2022 concerning Voting Day and Date in the General Election of President and Vice President, Members of the People's Representative Council, Members of the Regional Representative Council, Members of the Provincial Regional People's Legislative Assembly and Members of the Regency/City Regional People's Legislative Council, which determine the day and date of voting for the 2024 general election, namely Wednesday, February 14, 2024.

The discourse on postponing the general election is unreasonable, considering that Indonesia is in a normal state and is doing well; the postponement of the general election must be based on the constitution. Such a postponement may require an amendment to the 1945 Constitution (1945 Constitution).²⁰

in case of serious crisis, the Cameroon Constitution allows election postponement and asserts that the election of a new Assembly shall take place not less than forty days and not more than one hundred and twenty days following the expiry of the extension or abridgment period²¹

Regarding the discourse on postponing the General Election, which was carried out through legal instruments amendment to the 1945 Constitution, it is not seen from the addition of the term of office as Article 7 of the 1945 Constitution of the Republic of Indonesia, which states that the President Vice President holds office for five years, and afterward can be re-elected in the same position, only for one term. The additional term of office must be through the general election instrument, while the postponement of the general election is essentially not through the general election instrument itself. So that the postponement of general elections must be seen from the extension of the President's

²⁰ Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi. *JAPHTN-HAN*, 1(2), 186-207. <https://doi.org/10.55292/japhtnhan.v1i2.48>

²¹ Abebe, S. M. (2021). Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation. *Вестник Российского университета дружбы народов. Серия: Юридические науки*, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>

term of office, and the implementation of general elections is no longer based on holding general elections every five years as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia.

Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm if a postponement of general elections is necessary. As for the amendments to the 1945 Constitution of the Republic of Indonesia as regulated in Article 37 of the 1945 Constitution of the Republic of Indonesia, which states that:

- 1) Proposals for amendments to the articles of the constitution can be put on the agenda at the People's Consultative Assembly session if submitted by at least 1/3 of the total number of members of the People's Consultative Assembly.
- 2) Each proposal to amend the articles of the constitution is submitted in writing, and the part proposed for amendment is indicated along with the reasons.
- 3) To amend the articles of the constitution, the People's Consultative Assembly session shall be attended by at least 2/3 of the total number of members.
- 4) Decisions to amend the articles of the constitution are made with the approval of at least fifty percent plus one member from all members of the People's Consultative Assembly.
- 5) Specifically, no changes can be made regarding the form of the Unitary State of the Republic of Indonesia.

According to the provisions of the changes or amendments to the NRI Constitution as referred to above, when referring to the proposed postponement of general elections, that is, it must refer to changes in articles specifically related to the holding of general elections as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia. In addition, it is carried out in this manner, namely submitted by at least 1/3 of the total number of MPR members, submitted in writing to the part proposed to be amended and the reason for the change, attended by 2/3 of the total number of MPR members and approved by at least fifty percent plus one from all members of the MPR. Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize the

Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself.

Conclusion

Based on the discussion in the research journal, as explained above, the following conclusions are drawn based on Article 22E of the 1945 NRI Constitution and Article 167 paragraph (1) of Law no. 7/2017, which regulates that General Elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years.

Regarding the understanding of the postponement of the General Election as stipulated in Law no. 7/2017, which regulates the existence of a advanced general election and a follow-up general election. The advanced general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election, so the advanced general election and the follow-up general election do not constitute a postponement of the general election outside the stages of holding the general election.

Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution.

Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize

the Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself.

Bibliography

Books:

Abdul Mukhtie Fadjar, 2016, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang.

Denny Indrayana, 2019, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta.

Fritz Edward Siregar, 2019, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta.

H.A.S. Natabaya, 2006, *Sistem Peraturan Perundang-Undangan di Indonesia*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta.

Janedjri M. Gaffar, 2013, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta.

Jimly Asshiddiqie, 2010, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta.

Liddle R. William, 1992, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta.

Miriam Budiardjo, 2009, *Dasar-Dasar Ilmu Politik*, Gramedia, Jakarta.

Padmo Wahyono, 1994, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta.

Saldi Isra, 2013, *Pergeseran Fungsi Legislasi, Memperkuat Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta.

Sodikin, 2014, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi.

Topo Santoso dan Ida Budhiati, 2019, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta.

Journal :

- Abebe, S. M. (2021). Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation. *Вестник Российского университета дружбы народов. Серия: Юридические науки*, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>
- Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>
- Harimurti, Y. W. (2022). Penundaan Pemilihan Umum dalam Perspektif Demokrasi. *RechtIdee*, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.
- Indradjaja, N., Abid, M. A., & Andarini, V. (2022). Pemilihan Umum Serentak Dan Wacana Penundaan Pemilihan Umum Dalam Perspektif Azas Demokrasi Indonesia. *Wijaya Putra Law Review*, 1(2), h.111. <https://doi.org/10.38156/wplr.v1i2.73>.
- Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi. *JAPHTN-HAN*, 1(2), 186-207. <https://doi.org/10.55292/japhtnhan.v1i2.48>
- Widyana, M. R., & Fikriansyah, A. (2021). Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections. *Jurnal Adhyasta Pemilu*, 4(2), 52-65. <https://doi.org/10.55108/jap.v4i2.48>

2. Bukti konfirmasi review dan artikel diterima
(29 April 2023)

Review and Acceptance Letter

Dear Author,

Manuscript Submission ID: Russian Law journal_2023_04_1448

Manuscript Title: CONSTITUTIONAL POSTPONEMENT OF THE 2024 GENERAL ELECTION IN THE
INDONESIAN STATE SYSTEM

On behalf of Editorial Team of the “Russian Law journal (RLJ)”, we are pleased to inform you that your manuscript has been accepted publication in Current Issue of 2023 as per the recommendations given by the peer review group of experts.

The blind peer review process results are given below

REVIEW RESULT: Article is accepted

REVIEW SHEET: JUDGMENTS

S.N.	JUDGMENT CRITERIA	COMMENT
1.	Originality	70%
2.	Scope of the Article	66%
3.	Content writing of the article	Satisfactory
4.	Clearly and concisely written of the article	Satisfactory
5.	Are the presentation, organization and length satisfactory?	yes
6.	Are the illustrations and tables necessary and acceptable?	Yes
7.	Are the interpretations and conclusions sound and justified by the data?	Yes
8.	Are the references Cited Properly	Yes

For any further query feel free to contact us.

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Russian Law Journal

ISSN: 2312-3605

3. Bukti konfirmasi artikel untuk publish dan copyright
(7 Mei 2023)

CONSTITUTIONAL POSTPONEMENT OF THE 2024 GENERAL ELECTION IN THE INDONESIAN STATE SYSTEM

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Abstract - The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections held every 5 (five) years and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution. This becomes the primary argument in reviewing the constitutionality of postponing the 2024 General Elections in the Indonesian State Administration System. Postponement of General Elections as regulated in Law no. 7/2017, which basically regulates the existence of a an advanced general election and a follow-up general election. The follow-up general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election so that the follow-up general election and the follow-up general election do not include a postponement of the general election outside the stages of holding the general election. Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution

Keywords: general election, postponement, advanced general election, follow-up elections, amendment.

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2. Implementation of General Elections in Indonesia
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ACKNOWLEDGEMENT

INTRODUCTION

Post-reform Indonesia experienced a turning point in evaluating the application of the principle of popular sovereignty, which was considered minimal during the Old Order and New Order regimes. This was marked by changes to the body of the 1945 Constitution, especially in the articles that specifically regulate the strengthening of the presidential system in Indonesia.¹ Indirectly, strengthening the presidential system as agreed by the MPR at the beginning of the 1945 Constitution Amendment process will affect the procedures for selecting the President and Vice President, that in implementing a presidential system, the President is responsible to the people directly and not through the MPR.²

¹ Saldi Isra, *Pergeseran Fungsi Legislasi, Memperkuat Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta, 2013, hal. Xix dan 3.

² Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2010, hal. 62-63.

Through this momentum, Indonesia underwent a system transformation from previously electing the President and Vice President by the MPR (indirect democracy) to selecting the President and Vice President directly by the people (direct democracy). The momentum of the shift in the general election system does not necessarily reduce constitutional problems in Indonesia.

The general election, constitutionally stated in Article 22E paragraph (2) of the 1945 Constitution, confirms that "General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council." General elections (Pemilu), which are held by a national, permanent, and independent election commission and are held every five years, are a form of circulation of the giving of new mandates by the people to their representatives in the Legislature and to the President and Vice President as a manifestation of popular sovereignty. After the post-reform reform, the general elections were held 5 (five) times, namely in 1999, 2004, 2009, 2014, and 2019.

Regarding the implementation of the next general election, which will be held in 2024, it is colored by the discourse of postponement. The Minister of Investment, Bahlil Lahadalia, voiced the discourse on postponing the General Election as intended and expressed business people's aspirations to postpone the General Election. In addition, this discourse was again voiced by political parties, namely the National Awakening Party (PKB), the National Mandate Party (PAN), and the Golongan Karya Party (Golkar), on the pretext that Indonesia's economy has not been stable due to the pandemic. As is well known, the holding of the 2024 general election was previously jointly agreed upon by Commission II of the DPR RI, the Ministry of Home Affairs of the Republic of Indonesia, the General Election Commission, and the General Election Supervisory Body, which was set to be held on February 14, 2024.

The discourse on postponing the general election then strengthened when the decision on the lawsuit 757/Pdt.G/2022, which was filed on December 8, 2022, at the Central Jakarta District Court (PN Jakpus) which granted the Prima Party's lawsuit, ordered the KPU to postpone the general election. "Punish the Defendant not to carry out the remaining stages of the 2024 General Election since this decision was pronounced and to carry out the General Election stages from the beginning for approximately 2 (two) years 4 (four) months, 7 (seven) days," reads the fifth dictum of the decision.³

The postponement of general elections in Indonesia is not a new thing. After the 1945 Constitution was formed after Indonesian Independence, general elections were planned in 1946. This failed because the Act was still being drafted, and state security at that time was also unstable. The first general elections could only be held on September 29, 1955, to elect members of the DPR and on December 19, 1955, to elect members of the Constituent Assembly based on the 1950 Constitutional Constitution and based on Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.⁴ After the 1955 general election, which should have been held in 1959, it was postponed to 1960 due to state security reasons. General elections were held again on July 5, 1971, after the 1945 Constitution was re-enforced based on the MPRSXLII/MPRS/1968 Decree concerning Amendments to MPRS Decree No. XI/MPRS/1966 mandates that general elections be held no later than July 5, 1971.⁵

The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections, which are held every 5 (five) years, and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution itself.

Based on this, the researcher, in this case, is interested in discussing the constitutionality of the postponement of the 2024 general election with the title "Constitutional Postponement of the 2024 General Election in the Indonesian State Administration System". The formulation of the problem raised in this Research Journal is What is the Constitutional Postponement of the 2024 General Elections based on the Indonesian State Administration System?.

³ <https://makassar.tribunnews.com/2023/03/02/dosen-hukum-tata-negara-umi-tidak-bisa-putusan-pn-jakpus-tunda-pemilu-2024?page=2>. Diakses pada tanggal 120 Maret 2023

⁴ Janedjri M. Gaffar, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta, 2013, hal. 100.

⁵ Fritz Edward Siregar, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta, 2019, hal. 11.



DISCUSSION

1. Democracy and General Elections

Constitutional democracy emerged as a program and a concrete political system at the end of the 19th century. Constitutional democracy had already developed in Western Europe in the 15th and 16th centuries. If traced far back, we can already find the idea of democracy in the 6th to 3rd centuries BC, namely in the form of direct democracy (direct democracy) applied (city-state).⁶

In order to realize political rights effectively, the idea arose of limiting government power with a written and unwritten constitution. This constitution is not only a document that reflects the division of powers among state institutions (executive, legislative and judicial), but also determines and limits the powers of the government on the one hand and the other hand, guarantees the rights of its citizens.⁷

The hallmark of constitutional democracy is the idea that a democratic government is a government that has limited power and is not justified in acting arbitrarily against its citizens. Restrictions on government powers are laid down in the constitution. Therefore, it is often called government based on the constitution (constitutional government). So, constitutional government is the same as limited government or restricted government. In addition, power is divided so that opportunities for abuse are minimized, namely by handing it over to several people or bodies and not concentrating government power in one hand or one body. The juridical formulation of these principles is known as the *rechtstaat* (the rule of law) and the rule of law.⁸

The primary conditions for the implementation of a democratic government under the rule of law are:⁹

- a. Constitutional protection, in the sense that apart from guaranteeing individual rights, the constitution must also determine procedural ways to obtain protection for guaranteed rights;
- b. An independent and impartial tribunal;
- c. Free general elections;
- d. Freedom of expression;
- e. Freedom of association/organization and opposition;
- f. civil education.

Democracy is a government system based on people's sovereignty and realized by a government based on people's representatives, whose power and authority come from and are exercised through people's representatives and are fully responsible to the people. Therefore, democracy requires general elections to elect the people's representatives and must be held periodically in a free, secret, honest, and fair manner.¹⁰

Elections as one of the main pillars of a democratic government are properly holding general elections, but democracy is not the same as general elections. Even though elections are only one aspect of democracy, democratic elections are an important requirement in the administration of a democratic state. Elections in democratic theory are the link between the principle of popular sovereignty and the practice of governance by a few officials. Citizens elect their leaders, and it is through them that daily substantive issues are decided.¹¹

General elections are a state mechanism for selecting state leaders (executive) and members of parliament (Legislature). The quality and routine of holding general elections will determine the level of democracy in a country.¹² Because general elections are a consequence of a democratic country, general elections are the most basic form of political participation of the people or citizens to determine the government and programs that are in accordance with their wishes, at least the government or

⁶ Topo Santoso dan Ida Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta, 2019, hal. 6.

⁷ *Ibid*, hal.7-8.

⁸ *Ibid*, hal. (107).-108.

⁹ *Ibid*, hal. 116

¹⁰ Abdul Mukhtie Fadjar, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang, 2016, hal. 60.

¹¹ Liddle R. William, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta, 1992, hal. 32.

¹² Denny Indrayana, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta, 2019, hal. 25.

programs that they can accept.¹³ The general election is a concept of procedural democracy and also one of the strongest ways for the people to implement contemporary democracy.¹⁴

The function and purpose of the general election itself is to ensure that there is a limitation of power, especially in the aspect of limits of power, namely the limitation of power so that a person or group of people does not hold positions of power in a country for an unlimited time. The absence of power restrictions from the limit of power aspect not only creates incumbents who are not evaluated but also has the potential to make incumbents grow into tyrannical and authoritarian rulers, which in turn triggers the use of methods outside the constitution stop tyrannical or authoritarian practices.

The experience of the New Order rulers, who have been in power for more than thirty years, has become an important democratic lesson about how unclear the use of limits of power in the administration of state power must end in extra-parliamentary coercion by the people. The same experience also occurred when President Soekarno was in power through MPRS Decree No. III/MPRS/1963, which stated that President Soekarno was in power for life, was the reason that triggered mass protests and people's demonstrations to end Soekarno's rule.

Postponement of General Elections cannot be separated from democracy. This is because general elections are the embodiment of democracy. One of the core pillars of democracy in general elections. Because without general elections, democracy will only be pseudo. Therefore, it is very inappropriate to talk about General Elections without discussing the essence of democracy.¹⁵ Democratic elections, Jeane Kirkpatrick proposed the limits of democratic elections, namely, "democratic elections are not just symbols ... but elections that are competitive, periodic, inclusive and definitive. Where the main decision-makers in government are elected by the people who enjoy broad Freedom to criticize the government and offer alternatives."¹⁶

2. Implementation of General Elections in Indonesia

Concerning the history of the constitutional history of the Unitary State of the Republic of Indonesia, specifically arrangements at the level of the constitution, new general elections are stated explicitly in Article 35 of the 1950 Provisional Constitution, which states that "the will of the people is the basis of the ruler's power; This will is expressed in periodic elections that are honest and carried out according to the right to vote that are general and equal, as well as secret voting or according to a method that also guarantees Freedom of expression.

However, the general election was carried out after the fundamental law had been replaced by the United Republic of Indonesia Constitution (KRIS) and the UUDS. National elections could only be held in 1955, with the legal basis used was Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.

The general election was aimed at carrying out the orderly life of the nation as stipulated by Pancasila and the 1945 Constitution, as well as the ideals of the Proclamation of Independence and legislation on August 17, 1945. During the New Order era, six general elections were held: the 1971 general election, 1977, 1982, 1987, 1992, and 1997. When viewed from the aspects of the system, organizers, validation, violations, and settlement, no significant differences were found from the six implementations of the general election. The mandate and principles for organizing general elections during the New Order era were outlined in the MPRS Decree No. XI/MPRS/1966 concerning General Elections and MPRS Decree No. XXII/MPRS/1966 concerning Party/Organism and Employment. To implement the MPRS Decree on General Elections, Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body (UU No. 15/1969) was formed. This law later became the basis for implementing the 1971 General Election held on July 5, 1971.

¹³ Sodikin, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi, 2014, hal. 3-4.

¹⁴ Widyana, M. R., & Fikriansyah, A. (2021). Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections. *Jurnal Adhyasta Pemilu*, 4(2), 52-65. <https://doi.org/10.55108/jap.v4i2.48>

¹⁵ Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>

¹⁶ Harimurti, Y. W. (2022). Penundaan Pemilihan Umum dalam Perspektif Demokrasi. *RechtIdee*, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.



The second general election during the New Order era was the general election held in 1977. Regarding implementing the general election, Law no. 15/1969 was amended by Act 5 of 1975 (UU No. 5/1975). Apart from that, Government Regulation Number 1 of 1976 was also issued regarding the Implementation of Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. The 1977 general election was held on May 2, 1977.

The third general election during the New Order era was held 1982 on May 4, 1982. To implement the 1982 general election, changes were made to the General Election Law through Law Number 2 of 1980 concerning Amendments to the Law. Law Number 15 of 1969 concerning General Election for Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. Further provisions regarding implementing the 1982 general election are regulated in Government Regulation 41 of 1980 concerning implementing the Election Law general.

The fourth general election during the New Order era was the 1987 general election. To carry out the 1987 general election, amendments to the general election law were made through Law No. 1 of 1985, and a new Government Regulation was formed, namely Government Regulation No. 35 of 1985. The general election was held on April 23, 1987.

The fifth general election in the New Order era was the 1992 general election. In the 1992 general election, there was no change in the general election law. Changes occur in Government Regulations, regulated in Regulation 37 of 1990. Provisions for Amendments in these Government Regulations concern editorial and technical issues; while related to systems, organizers, violations, and resolution of violations and disputes, the provisions are still subject to the previous general election.

The last general election during the New Order era was 1997. In the 1997 general election, there were no changes to the public election law, namely Law no. 15/1969, as last amended by Law Number 1/1985. Changes occurred in the implementation provisions, namely in Government Regulation Number 74 of 1996 concerning Amendments to Government Regulation Number 35 of 1985 concerning the Implementation of the General Election Law as amended several times, most recently by Government Regulation Number 10 of 1995.

To meet the demands for reform, which had overthrown the power of the New Order and resolved the constitutional crisis, the 1998 MPR Special Session was held. One of the outcomes of the MPR Special Session was MPR Decree Number X/MPR/1998 concerning Principles of Development Reform in the Context of Saving Normalization of National Life as the Direction of the State. This decree mandates general elections in June 1999 at the latest.

To carry out the 1999 general elections, Law Number 3 of 1999 concerning General Elections was formed. The law emphasizes that general elections are a means of implementing people's sovereignty which is held in a democratic, transparent, honest, and fair manner by holding direct, general, free, and secret voting.

The second general election in the reform era was held in 2004. The policy outline for implementing the 2004 general election is contained in the MPR Decree Number IV/MPR/2009 concerning the Outline of State Policy for 1999-2004. The Policy Direction in the Political Sector stipulates that a democratic general election system and implementation will be developed. General elections will be conducted highly with the broadest possible public participation. The laws formed as the basis for implementing the 2004 general election were Law Number 12 of 2003, concerning the General Election of Members of the DPR, DPD, and Law Number 23 of 2003, concerning the President and Vice President.

The third post-reform general election was the 2009 general election which was held based on Law Number 10 of 2008 concerning the General Election of Members of the DPR, DPD, and DPRD, as well as Law Number 42 of 2008 concerning the General Election of the President and Vice President. In the next general election, namely the 2014 general election, Law Number 8 of 2012 was stipulated concerning the General Election of Members of the DPR, DPD, and DPRD.

For the implementation of the next general election which will be held in 2019, where the implementation is based on Law Number 7 of 2017 concerning General Elections. The law is a development in the implementation of General Elections in Indonesia. The law is a development in arranging provisions related to general elections. The requirements for implementing General Elections for the DPR, DPD, and DPRD are united with the provisions for implementing the President's and Vice President's General Election. The 2019 general election was the start of the implementation of the simultaneous general elections for members of the DPR, DPD, and DPRD, as well as the general election of the President and Vice President.

3. Constitutional Postponement of General Elections in the State Administration System in Indonesia

They are entering the next general election, which will be held in 2024, where issues arise that a postponement of the general election will arise. Regarding this issue, the Minister of Investment, Bahlil Lahaladia voiced it for the first time during a Working Meeting with Commission VI of the DPR on January 31, 2022. Bahlil Lahaladia stated that according to the survey, the level of satisfaction with President Jokowi reached 70% (seventy percent) and combined expectations of entrepreneurs and reasons for stability. That advancing and postponing general elections in this nation is not prohibited, given the conditions of the acceleration of the 1999 general election due to the post-reform crisis, so there is room to consider carrying out the process for the 2024 general election to be postponed.¹⁷

Muhaimin Iskandar, the National Awakening Party (PKB) chairman, reiterated the idea of postponing the General Election. Muhaimin Iskandar stated that the idea of postponing the general election could be carried out within one year and a maximum of two years as part of providing certainty to business actors who give a positive trend to Joko Widodo's government as well as positive and undisturbed economic prospects as a result of the general election. This idea was then positively welcomed by Airlangga Hartato as Chair of the Golongan Karya Party (Golkar) and Zulkifli Hasan as Chair of the National Mandate Party (PAN).¹⁸

Departing from the idea of postponing the implementation of the 2024 General Elections, this has led to discourse in the Indonesian constitutional system, especially regarding the general election system in Indonesia. The postponement of the General Election itself in the Indonesian general election system occurred at the beginning after the 1945 Constitution was formed. General elections were planned for 1946, but this did not happen because the implementing law was still in the drafting process and the state's security conditions at that time were also unstable. The first general election could only be held in 1955 based on the 1950 UUDS Constitution. The implementation of the 1962 General Election was again postponed in 1966 and in 1968. The 1968 General Election plan was postponed again, and in the end, the General Election could be held in 1971. The General Election spanning five years only occurred after the Election public in 1971.

Apart from the postponement of the general elections that occurred in Indonesia, general elections were brought forward, namely after the 1997 general elections. New policies and public pressure to carry out reforms, one of which is related to general elections. The general election referred to was held in 1999. After the 1999 general election, the implementation of the post-reform five-year general election system began, namely, 2004, 2009, and 2014 general elections and the 2019 general elections.

The constitutional implementation of General Elections in Indonesia is regulated in the 1945 Constitution. Based on Article 22E of the 1945 Constitution states that:

- a. General elections are held directly, publicly, freely, confidentially, honestly, and somewhat every five years.
- b. General elections are held to elect members of the People's Legislative Council, the Regional Representatives Council, the President and vice president, and the Regional People's Representative Council.
- c. Participants in the general election to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly are political parties.
- d. Participants in the general election to elect members of the Regional Representatives Council are individuals.
- e. A national, permanent, and independent election commission holds general elections.
- f. Further provisions regarding general elections shall be regulated by law.

In addition, the technical provisions for implementing Indonesian general elections are regulated in Law Number 7 of 2017 concerning General Elections (UU No. 7/2017), which is based on Article 167 paragraph (1) of Law No. 7/2017 which states that general elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years.

Regarding the understanding of the postponement of the General Election itself, when referring to the provisions of Law no. 7/2017, it can be assumed that the law regulates general elections and subsequent general elections, which can be assumed as part of the interpretation of the postponement

¹⁷ Dikutip dari <https://www.bbc.com/indonesia/indonesia-60561290>, Diakses pada Tanggal 28 Maret 2022.

¹⁸ *Ibid.*

of general elections by the law. Follow-up general elections and follow-up general elections, as stipulated in the provisions of Articles 431, 432, and 433 of Law no. 7/2017, which states:

Article 431

1) If in part or all of the territories of the Unitary State of the Republic of Indonesia, there are riots, security disturbances, natural disasters, and other disturbances which result in part of the stages of holding general elections being unable to be carried out, a follow-up general election shall be held.

2) The holding of the general election, as referred to in paragraph (1), starts from the stage where the general election is held.

Article 432

1) If a part or all of the territory of the Unitary State of the Republic of Indonesia experiences riots, security disturbances, natural disasters, or other disturbances which result in the impossibility of all stages of holding general elections, a follow-up general election shall be held.

2) Follow-up general elections are carried out for all stages of the general elections.

Article 433

advanced general elections and follow-up general elections are held after stages are delayed in implementing general elections.

1) Penetapan tertundanya pelaksanaan Pemilihan umum dilakukan oleh:

- a. Regency/Municipal KPU on the recommendation of the PPK if the delay in holding the General Election covers one or several Sub-Districts/Villages;
- b. Regency/Municipal KPU on the recommendation of the PPK if the General Election is postponed covering one or several Districts;
- c. Provincial KPU on the recommendation of Regency/Municipal KPU if the General Election is delayed by covering one or several Regencies/Cities; or
- d. KPU on the recommendation of the Provincial KPU if the continuation or follow-up General Election implementation covers one or several Provinces.

2) If the General Election, as referred to in Article 431 paragraph (1) and Article 432 paragraph (1), cannot be held in 40% (forty percent) of the Provinces and 50% (fifty percent) of the number of registered voters nationally may exercise their right to vote, the President determines whether the President shall carry out a follow-up general election or follow-up general election at the suggestion of the KPU.

3) Further provisions regarding the procedure and time for holding the advanced general election or follow-up general election are regulated in KPU Regulations.

Based on the understanding regarding the postponement of general elections in the form of advanced general elections and follow-up general elections as stipulated in the provisions of the General Election Law, in essence, it is a delay that occurs in the stages of holding general elections that have previously been determined, especially in the organic regulations of the General Election Commission as organizer Election techniques. The stages of the general election as referred to when referring to the stages of holding the general election in the 2019 general election are regulated in Article 3 of KPU Regulation Number 7 of 2017 concerning Stages, Programs, and Schedules for the 2019 General Election, including:

- a. Socialization;
- b. Program and budget planning as well as preparation of implementing regulations for holding general elections;
- c. Updating voter data and compilation of voter lists;
- d. Registration and verification of General Election Participants;
- e. Determination of General Election Participants;
- f. Determination of the number of seats and Determination of constituencies;
- g. Nomination of President and Vice President as well as Members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD;
- h. Election campaign period;
- i. Quiet period;
- j. Voting and counting of votes;
- k. Determination of general election results;
- l. Taking the oath/pledge of the President and Vice President and Members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD.

Apart from being related to the stages of holding general elections, advanced general elections and follow-up general elections, as stipulated in the general election law, are based on circumstances so that the stages of holding general elections as referred to cannot be continued for stages that have been

halted for general elections. Advanced elections and all stages of holding general elections for follow-up general elections include conditions where there are riots, security disturbances, natural disasters, or other disturbances.

Regarding the conditions referred to above, if referring to the 2020 Regional Head Elections (Pilkada), advanced Pilkada will be applied. The advanced Pilkada was carried out by continuing the stages of holding the Pilkada, which were postponed then. The 2020 Pilkada Continuation was carried out based on the Regulation instead of Law (Perpu) issued by the President, which was then promulgated through Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations Substitute Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become law. The circumstances that compelled the Continuation of Regional Elections to be carried out were due to the Non-Natural Disaster Conditions Corona Virus Disease 2019 (Covid-19).

As the discourse on the postponement of general elections for the 2024 general election is currently developing, basically, it cannot be linked to the postponement of general elections as stipulated in the provisions of the general election law, namely in the form of advanced general elections and/or follow-up general elections. This is not related because the stages of holding the 2024 general election have not been carried out, referring to the absence of implementation of the stages of holding the 2024 general election carried out by the KPU and the absence of KPU organic provisions governing the stages of holding the 2024 general election. So the discussion on the postponement of the 2024 general election is a discourse on the postponement of the general election outside the stages of holding the 2024 general election.

Regarding the postponement of the general election outside the stages of holding the general election, in essence, it is not regulated in the provisions of laws and regulations, so it can be stated that the postponement of general elections outside the stages of holding the general election does not have mechanisms and other legal instruments. To present mechanisms and legal instruments for postponing general elections outside the stages of organizing general elections, especially in the 2024 general elections, this can be done through the presence of government regulation in lieu of law or through amendments to the 1945 Constitution.

The Perppu is a statutory regulation stipulated by the President, where the content of the Perpu is the same as the content of the law. However, the clause "forced emergency matters" which is a criterion for the President's subjectivity (noodverordening-streht van de President). The Perppu, as stipulated in Article 22 of the 1945 Constitution of the Republic of Indonesia, states that in the event of a pressing emergency, the President has the right to issue a Government Regulation in lieu of a Law, that Government Regulation must obtain the approval of the DPR in the next trial. What is meant by the next trial is the trial period of the DPR, in which there is only one recess period.¹⁹

Regarding matters of compelling urgency, based on the Decision of the Constitutional Court Number: 138/PUU-VII/2009, it states that a Perppu is needed if:

1. There is a situation, namely an urgent need to resolve legal issues quickly based on the law;
2. The required law does not yet exist, so there is a legal vacuum, or there is a law, but it is not sufficient;
3. This legal vacuum cannot be overcome by making laws in the usual manner because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Based on this, if the issuance of the Perppu is linked to the discourse of postponing the 2024 General Elections, then it is necessary to interpret the presence of the Perppu itself as a regulation of circumstances of urgency that compel so that the 2024 General Elections should be postponed. Indonesia's current condition has no clear precarious conditions, so a Perppu is needed, especially regarding the 2024 general election. The voting stages for the General Election will be held on Wednesday, February 14, 2024. The KPU as the technical executor of the 2024 General Election, has issued KPU Decree Number 21 of 2022 concerning Voting Day and Date in the General Election of President and Vice President, Members of the People's Representative Council, Members of the Regional Representative Council, Members of the Provincial Regional People's Legislative Assembly and Members of the Regency/City Regional People's Legislative Council, which determine the day and date of voting for the 2024 general election, namely Wednesday, February 14, 2024.

The discourse on postponing the general election is unreasonable, considering that Indonesia is in a normal state and is doing well; the postponement of the general election must be based on the

¹⁹ Padmo Wahyono, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta, 1994, hal. 132.

constitution. Such a postponement may require an amendment to the 1945 Constitution (1945 Constitution).²⁰

in case of serious crisis, the Cameroon Constitution allows election postponement and asserts that the election of a new Assembly shall take place not less than forty days and not more than one hundred and twenty days following the expiry of the extension or abridgment period²¹

Regarding the discourse on postponing the General Election, which was carried out through legal instruments amendment to the 1945 Constitution, it is not seen from the addition of the term of office as Article 7 of the 1945 Constitution of the Republic of Indonesia, which states that the President Vice President holds office for five years, and afterward can be re-elected in the same position, only for one term. The additional term of office must be through the general election instrument, while the postponement of the general election is essentially not through the general election instrument itself. So that the postponement of general elections must be seen from the extension of the President's term of office, and the implementation of general elections is no longer based on holding general elections every five years as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia.

Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm if a postponement of general elections is necessary. As for the amendments to the 1945 Constitution of the Republic of Indonesia as regulated in Article 37 of the 1945 Constitution of the Republic of Indonesia, which states that:

- 1) Proposals for amendments to 1) Proposals for amendments to the articles of the constitution can be put on the agenda at the People's Consultative Assembly session if submitted by at least 1/3 of the total number of members of the People's Consultative Assembly.
- 2) Each proposal to amend the articles of the constitution is submitted in writing, and the part proposed for amendment is indicated along with the reasons.
- 3) To amend the articles of the constitution, the People's Consultative Assembly session shall be attended by at least 2/3 of the total number of members.
- 4) Decisions to amend the articles of the constitution are made with the approval of at least fifty percent plus one member from all members of the People's Consultative Assembly.
- 5) Specifically, no changes can be made regarding the form of the Unitary State of the Republic of Indonesia.

According to the provisions of the changes or amendments to the NRI Constitution as referred to above, when referring to the proposed postponement of general elections, that is, it must refer to changes in articles specifically related to the holding of general elections as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia. In addition, it is carried out in this manner, namely submitted by at least 1/3 of the total number of MPR members, submitted in writing to the part proposed to be amended and the reason for the change, attended by 2/3 of the total number of MPR members and approved by at least fifty percent plus one from all members of the MPR.

Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize the Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself..

CONCLUSION

Based on the discussion in the research journal, as explained above, the following conclusions are drawn based on Article 22E of the 1945 NRI Constitution and Article 167 paragraph (1) of Law no. 7/2017,

²⁰ Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi. *JAPHTN-HAN*, 1(2), 186-207. <https://doi.org/10.55292/japhtnhan.v1i2.48>

²¹ Abebe, S. M. (2021). Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation. *Вестник Российского университета дружбы народов. Серия: Юридические науки*, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>

which regulates that General Elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years.

Regarding the understanding of the postponement of the General Election as stipulated in Law no. 7/2017, which regulates the existence of a advanced general election and a follow-up general election. The advanced general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election, so the advanced general election and the follow-up general election do not constitute a postponement of the general election outside the stages of holding the general election.

Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution.

Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize the Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself.

REFERENCES

Books:

- Abdul Mukhtie Fadjar, 2016, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang.
- Denny Indrayana, 2019, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta.
- Fritz Edward Siregar, 2019, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta.
- H.A.S. Natabaya, 2006, *Sistem Peraturan Perundang-Undangan di Indonesia*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta.
- Janedjri M. Gaffar, 2013, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta.
- Jimly Asshiddiqie, 2010, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta.
- Liddle R. William, 1992, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta.
- Miriam Budiardjo, 2009, *Dasar-Dasar Ilmu Politik*, Gramedia, Jakarta.
- Padmo Wahyono, 1994, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta.
- Saldi Isra, 2013, *Pergeseran Fungsi Legislasi, Menguatkan Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta.
- Sodikin, 2014, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi.
- Topo Santoso dan Ida Budhiati, 2019, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta.

Journal :

- Abebe, S. M. (2021). *Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation*. Вестник Российского университета дружбы народов. Серия: Юридические науки, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>
- Diniyanto, A. (2022). *Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy)*. Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>
- Harimurti, Y. W. (2022). *Penundaan Pemilihan Umum dalam Perspektif Demokrasi*. RechtIdee, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.
- Indradjaja, N., Abid, M. A., & Andarini, V. (2022). *Pemilihan Umum Serentak Dan Wacana Penundaan Pemilihan Umum Dalam Perspektif Azas Demokrasi Indonesia*. Wijaya Putra Law Review, 1(2), h.111. <https://doi.org/10.38156/wplr.v1i2.73>.



Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). *Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi*. JAPHTN-HAN, 1(2), 186-207.

<https://doi.org/10.55292/japhtnhan.v1i2.48>

Widyana, M. R., & Fikriansyah, A. (2021). *Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections*. Jurnal Adhyasta Pemilu, 4(2), 52-65.

<https://doi.org/10.55108/jap.v4i2.48>

Winarsi, s., prihatiningtyas, w., wahyuni, i., fitriana, z. M., & rahman, a. (2023). *The current position of environmental approval post-job creation law: ensuring the indonesian sdgs achievement*. Russian Law Journal, 11(2).

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CONSTITUTIONAL POSTPONEMENT OF THE 2024 GENERAL ELECTION IN THE INDONESIAN STATE SYSTEM

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Abstract: *The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections held every 5 (five) years and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution. This becomes the primary argument in reviewing the constitutionality of postponing the 2024 General Elections in the Indonesian State Administration System. Postponement of General Elections as regulated in Law no. 7/2017, which basically regulates the existence of a an advanced general election and a follow-up general election. The follow-up general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election so that the follow-up general election and the follow-up general election do not include a postponement of the general election outside the stages of holding the general election. Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution*

Keywords: *general election, postponement, advanced general election, follow-up elections, amendment.*

INTRODUCTION

Post-reform Indonesia experienced a turning point in evaluating the application of the principle of popular sovereignty, which was considered minimal during the Old Order and New Order regimes. This was marked by changes to the body of the 1945 Constitution, especially in the articles that specifically regulate the strengthening of the presidential system in Indonesia.¹ Indirectly, strengthening the presidential system as agreed by the MPR at the beginning of the 1945 Constitution Amendment process will affect the procedures for selecting the President and Vice President, that in implementing a presidential system, the President is responsible to the people directly and not through the MPR.² Through this momentum, Indonesia underwent a system transformation from previously electing the President and Vice President by the MPR (indirect democracy) to selecting the President and Vice President directly by the people (direct democracy). The momentum of the shift in the general election system does not necessarily reduce constitutional problems in Indonesia. The general election, constitutionally stated in Article 22E paragraph (2) of the 1945 Constitution, confirms that "General elections are held to elect members of the People's Representative Council, Regional Representative Council, President and Vice President, and Regional People's Representative Council." General elections (Pemilu), which are held by a national, permanent, and independent election commission and are held every five years, are a form of circulation of the giving of new mandates by the people to their representatives in the Legislature and to the President and Vice President as a manifestation of popular sovereignty. After the post-reform reform, the general elections were held 5 (five) times, namely in 1999, 2004, 2009, 2014, and 2019.

¹ Saldi Isra, *Pergeseran Fungsi Legislasi, Menguatkan Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta, 2013, hal. Xix dan 3.

² Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2010, hal. 62-63.

Regarding the implementation of the next general election, which will be held in 2024, it is colored by the discourse of postponement. The Minister of Investment, Bahlil Lahadalia, voiced the discourse on postponing the General Election as intended and expressed business people's aspirations to postpone the General Election. In addition, this discourse was again voiced by political parties, namely the National Awakening Party (PKB), the National Mandate Party (PAN), and the Golongan Karya Party (Golkar), on the pretext that Indonesia's economy has not been stable due to the pandemic. As is well known, the holding of the 2024 general election was previously jointly agreed upon by Commission II of the DPR RI, the Ministry of Home Affairs of the Republic of Indonesia, the General Election Commission, and the General Election Supervisory Body, which was set to be held on February 14, 2024.

The discourse on postponing the general election then strengthened when the decision on the lawsuit 757/Pdt.G/2022, which was filed on December 8, 2022, at the Central Jakarta District Court (PN Jakpus) which granted the Prima Party's lawsuit, ordered the KPU to postpone the general election. "Punish the Defendant not to carry out the remaining stages of the 2024 General Election since this decision was pronounced and to carry out the General Election stages from the beginning for approximately 2 (two) years 4 (four) months, 7 (seven) days," reads the fifth dictum of the decision.³ The postponement of general elections in Indonesia is not a new thing. After the 1945 Constitution was formed after Indonesian Independence, general elections were planned in 1946. This failed because the Act was still being drafted, and state security at that time was also unstable. The first general elections could only be held on September 29, 1955, to elect members of the DPR and on December 19, 1955, to elect members of the Constituent Assembly based on the 1950 Constitutional Constitution and based on Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.⁴ After the 1955 general election, which should have been held in 1959, it was postponed to 1960 due to state security reasons. General elections were held again on July 5, 1971, after the 1945 Constitution was re-enforced based on the MPRSXLII/MPRS/1968 Decree concerning Amendments to MPRS Decree No. XI/MPRS/1966 mandates that general elections be held no later than July 5, 1971.⁵

The discourse on postponing the 2024 general elections has become a separate discourse in implementing democracy in the Indonesian constitutional system. This intersects between holding general elections as mandated by the provisions of the 1945 Constitution and Law Number 7 of 2017 concerning general elections, which are held every 5 (five) years, and affirming the limitation of executive and legislative powers for 5 (five) years based on The 1945 Constitution itself.

Based on this, the researcher, in this case, is interested in discussing the constitutionality of the postponement of the 2024 general election with the title "Constitutional Postponement of the 2024 General Election in the Indonesian State Administration System". The formulation of the problem raised in this Research Journal is What is the Constitutional Postponement of the 2024 General Elections based on the Indonesian State Administration System?.

DISCUSSION

1. Democracy and General Elections

Constitutional democracy emerged as a program and a concrete political system at the end of the 19th century. Constitutional democracy had already developed in Western Europe in the 15th and 16th centuries. If traced far back, we can already find the idea of democracy in the 6th to 3rd centuries BC, namely in the form of direct democracy (direct democracy) applied (city-state).⁶

In order to realize political rights effectively, the idea arose of limiting government power with a written and unwritten constitution. This constitution is not only a document that reflects the division

³ <https://makassar.tribunnews.com/2023/03/02/dosen-hukum-tata-negara-umi-tidak-bisa-putusan-pn-jakpus-tunda-pemilu-2024?page=2>. Diakses pada tanggal 120 Maret 2023

⁴ Janedjri M. Gaffar, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta, 2013, hal. 100.

⁵ Fritz Edward Siregar, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta, 2019, hal. 11.

⁶ Topo Santoso dan Ida Budhiati, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta, 2019, hal. 6.

of powers among state institutions (executive, legislative and judicial), but also determines and limits the powers of the government on the one hand and the other hand, guarantees the rights of its citizens.⁷

The hallmark of constitutional democracy is the idea that a democratic government is a government that has limited power and is not justified in acting arbitrarily against its citizens. Restrictions on government powers are laid down in the constitution. Therefore, it is often called government based on the constitution (constitutional government). So, constitutional government is the same as limited government or restricted government. In addition, power is divided so that opportunities for abuse are minimized, namely by handing it over to several people or bodies and not concentrating government power in one hand or one body. The juridical formulation of these principles is known as the *rechtstaat* (the rule of law) and the rule of law.⁸

The primary conditions for the implementation of a democratic government under the rule of law are:⁹

- a. Constitutional protection, in the sense that apart from guaranteeing individual rights, the constitution must also determine procedural ways to obtain protection for guaranteed rights;
- b. An independent and impartial tribunal;
- c. Free general elections;
- d. Freedom of expression;
- e. Freedom of association/organization and opposition;
- f. civil education.

Democracy is a government system based on people's sovereignty and realized by a government based on people's representatives, whose power and authority come from and are exercised through people's representatives and are fully responsible to the people. Therefore, democracy requires general elections to elect the people's representatives and must be held periodically in a free, secret, honest, and fair manner.¹⁰

Elections as one of the main pillars of a democratic government are properly holding general elections, but democracy is not the same as general elections. Even though elections are only one aspect of democracy, democratic elections are an important requirement in the administration of a democratic state. Elections in democratic theory are the link between the principle of popular sovereignty and the practice of governance by a few officials. Citizens elect their leaders, and it is through them that daily substantive issues are decided.¹¹

General elections are a state mechanism for selecting state leaders (executive) and members of parliament (Legislature). The quality and routine of holding general elections will determine the level of democracy in a country.¹² Because general elections are a consequence of a democratic country, general elections are the most basic form of political participation of the people or citizens to determine the government and programs that are in accordance with their wishes, at least the government or programs that they can accept.¹³ The general election is a concept of procedural democracy and also one of the strongest ways for the people to implement contemporary democracy.¹⁴

The function and purpose of the general election itself is to ensure that there is a limitation of power, especially in the aspect of limits of power, namely the limitation of power so that a person or group of people does not hold positions of power in a country for an unlimited time. The absence of power

⁷ *Ibid*, hal.7-8.

⁸ *Ibid*, hal. (107).-108.

⁹ *Ibid*, hal. 116

¹⁰ Abdul Mukhtie Fadjar, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang, 2016, hal. 60.

¹¹ Liddle R. William, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta, 1992, hal. 32.

¹² Denny Indrayana, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta, 2019, hal. 25.

¹³ Sodikin, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi, 2014, hal. 3-4.

¹⁴ Widyana, M. R., & Fikriansyah, A. (2021). Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections. *Jurnal Adhyasta Pemilu*, 4(2), 52-65. <https://doi.org/10.55108/jap.v4i2.48>



restrictions from the limit of power aspect not only creates incumbents who are not evaluated but also has the potential to make incumbents grow into tyrannical and authoritarian rulers, which in turn triggers the use of methods outside the constitution stop tyrannical or authoritarian practices. The experience of the New Order rulers, who have been in power for more than thirty years, has become an important democratic lesson about how unclear the use of limits of power in the administration of state power must end in extra-parliamentary coercion by the people. The same experience also occurred when President Soekarno was in power through MPRS Decree No. III/MPRS/1963, which stated that President Soekarno was in power for life, was the reason that triggered mass protests and people's demonstrations to end Soekarno's rule.

Postponement of General Elections cannot be separated from democracy. This is because general elections are the embodiment of democracy. One of the core pillars of democracy in general elections. Because without general elections, democracy will only be pseudo. Therefore, it is very inappropriate to talk about General Elections without discussing the essence of democracy.¹⁵ Democratic elections, Jeane Kirkpatrick proposed the limits of democratic elections, namely, "democratic elections are not just symbols ... but elections that are competitive, periodic, inclusive and definitive. Where the main decision-makers in government are elected by the people who enjoy broad Freedom to criticize the government and offer alternatives."¹⁶

2. Implementation of General Elections in Indonesia

Concerning the history of the constitutional history of the Unitary State of the Republic of Indonesia, specifically arrangements at the level of the constitution, new general elections are stated explicitly in Article 35 of the 1950 Provisional Constitution, which states that "the will of the people is the basis of the ruler's power; This will is expressed in periodic elections that are honest and carried out according to the right to vote that are general and equal, as well as secret voting or according to a method that also guarantees Freedom of expression.

However, the general election was carried out after the fundamental law had been replaced by the United Republic of Indonesia Constitution (KRIS) and the UUDS. National elections could only be held in 1955, with the legal basis used was Law Number 7 of 1953 concerning the Election of Constituent Members and Members of the People's Representative Council.

The general election was aimed at carrying out the orderly life of the nation as stipulated by Pancasila and the 1945 Constitution, as well as the ideals of the Proclamation of Independence and legislation on August 17, 1945. During the New Order era, six general elections were held: the 1971 general election, 1977, 1982, 1987, 1992, and 1997. When viewed from the aspects of the system, organizers, validation, violations, and settlement, no significant differences were found from the six implementations of the general election. The mandate and principles for organizing general elections during the New Order era were outlined in the MPRS Decree No. XI/MPRS/1966 concerning General Elections and MPRS Decree No. XXII/MPRS/1966 concerning Party/Organism and Employment. To implement the MPRS Decree on General Elections, Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body (UU No. 15/1969) was formed. This law later became the basis for implementing the 1971 General Election held on July 5, 1971.

The second general election during the New Order era was the general election held in 1977. Regarding implementing the general election, Law no. 15/1969 was amended by Act 5 of 1975 (UU No. 5/1975). Apart from that, Government Regulation Number 1 of 1976 was also issued regarding the Implementation of Law Number 15 of 1969 concerning the General Election of Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. The 1977 general election was held on May 2, 1977.

¹⁵ Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>

¹⁶ Harimurti, Y. W. (2022). Penundaan Pemilihan Umum dalam Perspektif Demokrasi. *RechtIdee*, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.



The third general election during the New Order era was held 1982 on May 4, 1982. To implement the 1982 general election, changes were made to the General Election Law through Law Number 2 of 1980 concerning Amendments to the Law. Law Number 15 of 1969 concerning General Election for Members of the Consultative Body/People's Representative Body as Amended by Law Number 5 of 1975. Further provisions regarding implementing the 1982 general election are regulated in Government Regulation 41 of 1980 concerning implementing the Election Law general.

The fourth general election during the New Order era was the 1987 general election. To carry out the 1987 general election, amendments to the general election law were made through Law No. 1 of 1985, and a new Government Regulation was formed, namely Government Regulation No. 35 of 1985. The general election was held on April 23, 1987.

The fifth general election in the New Order era was the 1992 general election. In the 1992 general election, there was no change in the general election law. Changes occur in Government Regulations, regulated in Regulation 37 of 1990. Provisions for Amendments in these Government Regulations concern editorial and technical issues; while related to systems, organizers, violations, and resolution of violations and disputes, the provisions are still subject to the previous general election.

The last general election during the New Order era was 1997. In the 1997 general election, there were no changes to the public election law, namely Law no. 15/1969, as last amended by Law Number 1/1985. Changes occurred in the implementation provisions, namely in Government Regulation Number 74 of 1996 concerning Amendments to Government Regulation Number 35 of 1985 concerning the Implementation of the General Election Law as amended several times, most recently by Government Regulation Number 10 of 1995.

To meet the demands for reform, which had overthrown the power of the New Order and resolved the constitutional crisis, the 1998 MPR Special Session was held. One of the outcomes of the MPR Special Session was MPR Decree Number X/MPR/1998 concerning Principles of Development Reform in the Context of Saving Normalization of National Life as the Direction of the State. This decree mandates general elections in June 1999 at the latest.

To carry out the 1999 general elections, Law Number 3 of 1999 concerning General Elections was formed. The law emphasizes that general elections are a means of implementing people's sovereignty which is held in a democratic, transparent, honest, and fair manner by holding direct, general, free, and secret voting.

The second general election in the reform era was held in 2004. The policy outline for implementing the 2004 general election is contained in the MPR Decree Number IV/MPR/2009 concerning the Outline of State Policy for 1999-2004. The Policy Direction in the Political Sector stipulates that a democratic general election system and implementation will be developed. General elections will be conducted highly with the broadest possible public participation. The laws formed as the basis for implementing the 2004 general election were Law Number 12 of 2003, concerning the General Election of Members of the DPR, DPD, and Law Number 23 of 2003, concerning the President and Vice President.

The third post-reform general election was the 2009 general election which was held based on Law Number 10 of 2008 concerning the General Election of Members of the DPR, DPD, and DPRD, as well as Law Number 42 of 2008 concerning the General Election of the President and Vice President. In the next general election, namely the 2014 general election, Law Number 8 of 2012 was stipulated concerning the General Election of Members of the DPR, DPD, and DPRD.

For the implementation of the next general election which will be held in 2019, where the implementation is based on Law Number 7 of 2017 concerning General Elections. The law is a development in the implementation of General Elections in Indonesia. The law is a development in arranging provisions related to general elections. The requirements for implementing General Elections for the DPR, DPD, and DPRD are united with the provisions for implementing the President's and Vice President's General Election. The 2019 general election was the start of the implementation of the simultaneous general elections for members of the DPR, DPD, and DPRD, as well as the general election of the President and Vice President.

3. Constitutional Postponement of General Elections in the State Administration System in Indonesia

They are entering the next general election, which will be held in 2024, where issues arise that a postponement of the general election will arise. Regarding this issue, the Minister of Investment, Bahlil Lahaladia voiced it for the first time during a Working Meeting with Commission VI of the DPR on January 31, 2022. Bahlil Lahaladia stated that according to the survey, the level of satisfaction with President Jokowi reached 70% (seventy percent) and combined expectations of entrepreneurs and reasons for stability. That advancing and postponing general elections in this nation is not prohibited, given the conditions of the acceleration of the 1999 general election due to the post-reform crisis, so there is room to consider carrying out the process for the 2024 general election to be postponed.¹⁷

Muhaimin Iskandar, the National Awakening Party (PKB) chairman, reiterated the idea of postponing the General Election. Muhaimin Iskandar stated that the idea of postponing the general election could be carried out within one year and a maximum of two years as part of providing certainty to business actors who give a positive trend to Joko Widodo's government as well as positive and undisturbed economic prospects as a result of the general election. This idea was then positively welcomed by Airlangga Hartato as Chair of the Golongan Karya Party (Golkar) and Zulkifli Hasan as Chair of the National Mandate Party (PAN).¹⁸

Departing from the idea of postponing the implementation of the 2024 General Elections, this has led to discourse in the Indonesian constitutional system, especially regarding the general election system in Indonesia. The postponement of the General Election itself in the Indonesian general election system occurred at the beginning after the 1945 Constitution was formed. General elections were planned for 1946, but this did not happen because the implementing law was still in the drafting process and the state's security conditions at that time were also unstable. The first general election could only be held in 1955 based on the 1950 UUDS Constitution. The implementation of the 1962 General Election was again postponed in 1966 and in 1968. The 1968 General Election plan was postponed again, and in the end, the General Election could be held in 1971. The General Election spanning five years only occurred after the Election public in 1971.

Apart from the postponement of the general elections that occurred in Indonesia, general elections were brought forward, namely after the 1997 general elections. New policies and public pressure to carry out reforms, one of which is related to general elections. The general election referred to was held in 1999. After the 1999 general election, the implementation of the post-reform five-year general election system began, namely, 2004, 2009, and 2014 general elections and the 2019 general elections.

The constitutional implementation of General Elections in Indonesia is regulated in the 1945 Constitution. Based on Article 22E of the 1945 Constitution states that:

- a. General elections are held directly, publicly, freely, confidentially, honestly, and somewhat every five years.
- b. General elections are held to elect members of the People's Legislative Council, the Regional Representatives Council, the President and vice president, and the Regional People's Representative Council.
- c. Participants in the general election to elect members of the People's Legislative Assembly and members of the Regional People's Legislative Assembly are political parties.
- d. Participants in the general election to elect members of the Regional Representatives Council are individuals.
- e. A national, permanent, and independent election commission holds general elections.
- f. Further provisions regarding general elections shall be regulated by law.

In addition, the technical provisions for implementing Indonesian general elections are regulated in Law Number 7 of 2017 concerning General Elections (UU No. 7/2017), which is based on Article 167

¹⁷ Dikutip dari <https://www.bbc.com/indonesia/indonesia-60561290>, Diakses pada Tanggal 28 Maret 2022.

¹⁸ *Ibid.*

paragraph (1) of Law No. 7/2017 which states that general elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years.

Regarding the understanding of the postponement of the General Election itself, when referring to the provisions of Law no. 7/2017, it can be assumed that the law regulates general elections and subsequent general elections, which can be assumed as part of the interpretation of the postponement of general elections by the law. Follow-up general elections and follow-up general elections, as stipulated in the provisions of Articles 431, 432, and 433 of Law no. 7/2017, which states:

Article 431

- 1) If in part or all of the territories of the Unitary State of the Republic of Indonesia, there are riots, security disturbances, natural disasters, and other disturbances which result in part of the stages of holding general elections being unable to be carried out, a follow-up general election shall be held.
- 2) The holding of the general election, as referred to in paragraph (1), starts from the stage where the general election is held.

Article 432

- 1) If a part or all of the territory of the Unitary State of the Republic of Indonesia experiences riots, security disturbances, natural disasters, or other disturbances which result in the impossibility of all stages of holding general elections, a follow-up general election shall be held.
- 2) Follow-up general elections are carried out for all stages of the general elections.

Article 433

advanced general elections and follow-up general elections are held after stages are delayed in implementing general elections.

- 1) Penetapan tertundanya pelaksanaan Pemilihan umum dilakukan oleh:
 - a. Regency/Municipal KPU on the recommendation of the PPK if the delay in holding the General Election covers one or several Sub-Districts/Villages;
 - b. Regency/Municipal KPU on the recommendation of the PPK if the General Election is postponed covering one or several Districts;
 - c. Provincial KPU on the recommendation of Regency/Municipal KPU if the General Election is delayed by covering one or several Regencies/Cities; or
 - d. KPU on the recommendation of the Provincial KPU if the continuation or follow-up General Election implementation covers one or several Provinces.
- 2) If the General Election, as referred to in Article 431 paragraph (1) and Article 432 paragraph (1), cannot be held in 40% (forty percent) of the Provinces and 50% (fifty percent) of the number of registered voters nationally may exercise their right to vote, the President determines whether the President shall carry out a follow-up general election or follow-up general election at the suggestion of the KPU.
- 3) Further provisions regarding the procedure and time for holding the advanced general election or follow-up general election are regulated in KPU Regulations.

Based on the understanding regarding the postponement of general elections in the form of advanced general elections and follow-up general elections as stipulated in the provisions of the General Election Law, in essence, it is a delay that occurs in the stages of holding general elections that have previously been determined, especially in the organic regulations of the General Election Commission as organizer Election techniques. The stages of the general election as referred to when referring to the stages of holding the general election in the 2019 general election are regulated in Article 3 of KPU Regulation Number 7 of 2017 concerning Stages, Programs, and Schedules for the 2019 General Election, including:

- a. Socialization;
- b. Program and budget planning as well as preparation of implementing regulations for holding general elections;
- c. Updating voter data and compilation of voter lists;
- d. Registration and verification of General Election Participants;

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- e. Determination of General Election Participants;
 - f. Determination of the number of seats and Determination of constituencies;
 - g. Nomination of President and Vice President as well as Members of DPR, DPD, Provincial DPRD, and Regency/Municipal DPRD;
 - h. Election campaign period;
 - i. Quiet period;
 - j. Voting and counting of votes;
 - k. Determination of general election results;
 - l. Taking the oath/pledge of the President and Vice President and Members of the DPR, DPD, Provincial DPRD, and Regency/City DPRD.

Apart from being related to the stages of holding general elections, advanced general elections and follow-up general elections, as stipulated in the general election law, are based on circumstances so that the stages of holding general elections as referred to cannot be continued for stages that have been halted for general elections. Advanced elections and all stages of holding general elections for follow-up general elections include conditions where there are riots, security disturbances, natural disasters, or other disturbances.

Regarding the conditions referred to above, if referring to the 2020 Regional Head Elections (Pilkada), advanced Pilkada will be applied. The advanced Pilkada was carried out by continuing the stages of holding the Pilkada, which were postponed then. The 2020 Pilkada Continuation was carried out based on the Regulation instead of Law (Perpu) issued by the President, which was then promulgated through Law Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations Substitute Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become law. The circumstances that compelled the Continuation of Regional Elections to be carried out were due to the Non-Natural Disaster Conditions Corona Virus Disease 2019 (Covid-19).

As the discourse on the postponement of general elections for the 2024 general election is currently developing, basically, it cannot be linked to the postponement of general elections as stipulated in the provisions of the general election law, namely in the form of advanced general elections and/or follow-up general elections. This is not related because the stages of holding the 2024 general election have not been carried out, referring to the absence of implementation of the stages of holding the 2024 general election carried out by the KPU and the absence of KPU organic provisions governing the stages of holding the 2024 general election. So the discussion on the postponement of the 2024 general election is a discourse on the postponement of the general election outside the stages of holding the 2024 general election.

Regarding the postponement of the general election outside the stages of holding the general election, in essence, it is not regulated in the provisions of laws and regulations, so it can be stated that the postponement of general elections outside the stages of holding the general election does not have mechanisms and other legal instruments. To present mechanisms and legal instruments for postponing general elections outside the stages of organizing general elections, especially in the 2024 general elections, this can be done through the presence of government regulation in lieu of law or through amendments to the 1945 Constitution.

The Perppu is a statutory regulation stipulated by the President, where the content of the Perpu is the same as the content of the law. However, the clause "forced emergency matters" which is a criterion for the President's subjectivity (*noodverordenende-streng van de President*). The Perppu, as stipulated in Article 22 of the 1945 Constitution of the Republic of Indonesia, states that in the event of a pressing emergency, the President has the right to issue a Government Regulation in lieu of a Law, that Government Regulation must obtain the approval of the DPR in the next trial. What is meant by the next trial is the trial period of the DPR, in which there is only one recess period.¹⁹

Regarding matters of compelling urgency, based on the Decision of the Constitutional Court Number: 138/PUU-VII/2009, it states that a Perppu is needed if:

¹⁹ Padmo Wahyono, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta, 1994, hal. 132.



1. There is a situation, namely an urgent need to resolve legal issues quickly based on the law;
2. The required law does not yet exist, so there is a legal vacuum, or there is a law, but it is not sufficient;
3. This legal vacuum cannot be overcome by making laws in the usual manner because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Based on this, if the issuance of the Perppu is linked to the discourse of postponing the 2024 General Elections, then it is necessary to interpret the presence of the Perppu itself as a regulation of circumstances of urgency that compel so that the 2024 General Elections should be postponed. Indonesia's current condition has no clear precarious conditions, so a Perppu is needed, especially regarding the 2024 general election. The voting stages for the General Election will be held on Wednesday, February 14, 2024. The KPU as the technical executor of the 2024 General Election, has issued KPU Decree Number 21 of 2022 concerning Voting Day and Date in the General Election of President and Vice President, Members of the People's Representative Council, Members of the Regional Representative Council, Members of the Provincial Regional People's Legislative Assembly and Members of the Regency/City Regional People's Legislative Council, which determine the day and date of voting for the 2024 general election, namely Wednesday, February 14, 2024.

The discourse on postponing the general election is unreasonable, considering that Indonesia is in a normal state and is doing well; the postponement of the general election must be based on the constitution. Such a postponement may require an amendment to the 1945 Constitution (1945 Constitution).²⁰

in case of serious crisis, the Cameroon Constitution allows election postponement and asserts that the election of a new Assembly shall take place not less than forty days and not more than one hundred and twenty days following the expiry of the extension or abridgment period²¹

Regarding the discourse on postponing the General Election, which was carried out through legal instruments amendment to the 1945 Constitution, it is not seen from the addition of the term of office as Article 7 of the 1945 Constitution of the Republic of Indonesia, which states that the President Vice President holds office for five years, and afterward can be re-elected in the same position, only for one term. The additional term of office must be through the general election instrument, while the postponement of the general election is essentially not through the general election instrument itself. So that the postponement of general elections must be seen from the extension of the President's term of office, and the implementation of general elections is no longer based on holding general elections every five years as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia.

Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm if a postponement of general elections is necessary. As for the amendments to the 1945 Constitution of the Republic of Indonesia as regulated in Article 37 of the 1945 Constitution of the Republic of Indonesia, which states that:

- 1) Proposals for amendments to 1) Proposals for amendments to the articles of the constitution can be put on the agenda at the People's Consultative Assembly session if submitted by at least 1/3 of the total number of members of the People's Consultative Assembly.
- 2) Each proposal to amend the articles of the constitution is submitted in writing, and the part proposed for amendment is indicated along with the reasons.
- 3) To amend the articles of the constitution, the People's Consultative Assembly session shall be attended by at least 2/3 of the total number of members.

²⁰ Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi. *JAPHTN-HAN*, 1(2), 186-207. <https://doi.org/10.55292/japhtnhan.v1i2.48>

²¹ Abebe, S. M. (2021). Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation. *Вестник Российского университета дружбы народов. Серия: Юридические науки*, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>



4) Decisions to amend the articles of the constitution are made with the approval of at least fifty percent plus one member from all members of the People's Consultative Assembly.

5) Specifically, no changes can be made regarding the form of the Unitary State of the Republic of Indonesia.

According to the provisions of the changes or amendments to the NRI Constitution as referred to above, when referring to the proposed postponement of general elections, that is, it must refer to changes in articles specifically related to the holding of general elections as stipulated in Article 22E of the 1945 Constitution of the Republic of Indonesia. In addition, it is carried out in this manner, namely submitted by at least 1/3 of the total number of MPR members, submitted in writing to the part proposed to be amended and the reason for the change, attended by 2/3 of the total number of MPR members and approved by at least fifty percent plus one from all members of the MPR.

Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize the Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself..

CONCLUSION

Based on the discussion in the research journal, as explained above, the following conclusions are drawn based on Article 22E of the 1945 NRI Constitution and Article 167 paragraph (1) of Law no. 7/2017, which regulates that General Elections are held every 5 (five) years. Based on these provisions, the basis is that implementing general elections in Indonesia can only be held once every 5 (five) years.

Regarding the understanding of the postponement of the General Election as stipulated in Law no. 7/2017, which regulates the existence of a advanced general election and a follow-up general election. The advanced general election and the follow-up general election constitute a postponement of the general election in the stages of holding the general election, so the advanced general election and the follow-up general election do not constitute a postponement of the general election outside the stages of holding the general election.

Postponement of general elections outside the stages of holding general elections has no legal instruments. As for the realization of postponing the General Election, it can be done through the issuance of a Perppu or an Amendment to the 1945 Constitution. Suppose it refers to the issuance of a Perppu. In that case, it is necessary to emphasize matters of urgency that compel the postponement of the general election can be carried out. In addition, the realization of postponing general elections with a rational paradigm can be carried out through the Amendments to the 1945 Constitution.

Even though the Amendments to the 1945 Constitution of the Republic of Indonesia are a rational paradigm for realizing the discourse on postponing the 2024 General Elections, this takes work. In addition to the political conditions that were built to realize the Amendments to the 1945 Constitution of the Republic of Indonesia, it is also related to the conditions of the Indonesian nation, especially to the socio-cultural paradigm of society if the Amendments are made to the postponement of the 2024 General Election itself. In addition, if the amendment to the 1945 Constitution is carried out to realize the postponement of the 2024 General Election, it will have implications for the Indonesian Democracy, General Election, and State Administration system, one of which is related to the technical provisions of its implementation which have been amended, especially in Law No. 7/2017 itself.

REFERENCES

Books:

- [1] Abdul Mukhtie Fadjar, 2016, *Sejarah, Elemen, dan Tipe Negara Hukum*, Setara Press, Malang.
- [2] Denny Indrayana, 2019, *Strategi Memenangkan Sengketa Pemilu di Mahkamah Konstitusi*, Kompas, Jakarta.
- [3] Fritz Edward Siregar, 2019, *Menuju Peradilan Pemilu*, Themis Publishing, Jakarta.
- [4] H.A.S. Natabaya, 2006, *Sistem Peraturan Perundang-Undangan di Indonesia*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta.
- [5] Janedjri M. Gaffar, 2013, *Demokrasi dan Pemilu di Indonesia*, Konstitusi Press, Jakarta.
- [6] Jimly Asshiddiqie, 2010, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta.
- [7] Liddle R. William, 1992, *Pemilu-Pemilu Orde Baru: Pasang Surut Kekuasaan Politik*, LP3ES, Jakarta.
- [8] Miriam Budiardjo, 2009, *Dasar-Dasar Ilmu Politik*, Gramedia, Jakarta.
- [9] Padmo Wahyono, 1994, *Masalah Ketatanegaraan (Himpunan Tulisan)*, Ghalia Indonesia, Jakarta.
- [10] Saldi Isra, 2013, *Pergeseran Fungsi Legislasi, Memperkuat Model Legislasi Parlementer dalam Sistem Presidensial di Indonesia*, Rajawali Pers, Jakarta.
- [11] Sodikin, 2014, *Hukum Pemilu dalam Praktik Ketatanegaraan*, Gramata, Bekasi.
- [12] Topo Santoso dan Ida Budhiati, 2019, *Pemilu di Indonesia: Kelembagaan, Pelaksanaan dan Pengawasan*, Sinar Grafika, Jakarta.

Journal:

- [1] Abebe, S. M. (2021). Constitutional silence on election postponement in Ethiopia amidst a pandemic: A critique of constitutional interpretation. *Вестник Российского университета дружбы народов. Серия: Юридические науки*, 25(2), 714-731. <https://dx.doi.org/10.22363/2313-2337-2021-25-2-714-731>
- [2] Diniyanto, A. (2022). Penundaan Pemilihan Umum di Negara Hukum: Kajian Demokrasi Konstitusional (General Elections Postponement in Rule of Law: A Study of Constitutional Democracy). *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan*, 13(2), 227-245. <http://dx.doi.org/10.22212/jnh.v13i2.3365>
- [3] Harimurti, Y. W. (2022). Penundaan Pemilihan Umum dalam Perspektif Demokrasi. *RechtIdee*, 17, h. 7. <https://doi.org/https://doi.org/10.21107/ri.v17i1.14298.g6663>.
- [4] Indradjaja, N., Abid, M. A., & Andarini, V. (2022). Pemilihan Umum Serentak Dan Wacana Penundaan Pemilihan Umum Dalam Perspektif Azas Demokrasi Indonesia. *Wijaya Putra Law Review*, 1(2), h.111. <https://doi.org/10.38156/wplr.v1i2.73>.
- [5] Sapii, R. B. S., Pratama, Y. D., & Aponno, A. D. (2022). Realisasi Wacana Penundaan Pemilihan Umum: Manifestasi Kontraindikasi Terhadap Supremasi Konstitusi dan Demokrasi. *JAPHTN-HAN*, 1(2), 186-207. <https://doi.org/10.55292/japhtnhan.v1i2.48>
- [6] Widyana, M. R., & Fikriansyah, A. (2021). Analisis SOAR: Dampak Pelaksanaan Pilkada Serentak 2024 SOAR Analyze: The Impact of the 2024 Simultaneous Regional Elections. *Jurnal Adhyasta Pemilu*, 4(2), 52-65. <https://doi.org/10.55108/jap.v4i2.48>
- [7] Winarsi, s., prihatiningtyas, w., wahyuni, i., fitriana, z. M., & rahman, a. (2023). The current position of environmental approval post-job creation law: ensuring the indonesian sdgs achievement. *Russian Law Journal*, 11(2).