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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Improvement of the Presidential System in Concurrent Elections

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Abstract

The advantages of holding the elections for the people's representatives and the president which are held simultaneously, among others, reduce the cost of holding an unmitigated election to reach tens of trillions. In addition, simultaneous elections can also minimize costly politics, such as campaigning to money politics. Simultaneous elections can also directly avoid the abuse of power of officials during their term of office or what is called the politicization of the bureaucracy, is an effort to avoid corruption, maintain national stability and streamline the work of the Government. Meanwhile, the results of this study indicate that the Concurrent Election can be an effort to reform the Presidential system implemented in post-reform Indonesia.

Keywords: Concurrent General Elections, Presidential, reform

A. INTRODUCTION

The 1998 reforms marked a new chapter of democracy in Indonesia that brought major changes to the constitution of the Republic of Indonesia (NKRI). The amendments to the 1945 Constitution have substantially led to changes in the government system from Parliamentary to Presidential. There are at least four fundamental changes in the constitution as LIPI Political Science experts say, among others, the election of the President and the Vice President directly by the people; The term of office of the President and Vice President is five years and a maximum of 2 terms; the transfer of legislative functions towards the executive from "DPR approval" to "DPR authority" and finally the position and role of the MPR as the highest state institution were removed.¹

The consequence of the change in the Government system is the changing functions and relationships of high state institutions, especially between the Executive and the Legislature. The separation of powers between the executive and legislative bodies in the presidential system tends to cause polarization and political instability for some parties, therefore it is not suitable to be practiced in

countries that are just entering democratic transition, one of which is Indonesia. Ideally, the presidential system should be accompanied by minimizing the number of political parties, because the multiparty system can create the vulnerability of the relationship between the executive and legislature.

Simultaneous General Election (Pemilu) 2019 is the holding of legislative and executive elections which are held simultaneously. This decision was issued through the Decree of the Constitutional Court (MK) No 14 / PUU-11/2013 concerning Concurrent General Elections. This legal decision resulted from the process of granting the proposal to examine the material of Law No. 42 of 2008 concerning the Election of President and Vice President proposed by the Political Communication Expert, University of Indonesia Dr. Effendi Gazali with the Community Coalition for Concurrent Elections. Based on the considerations of the Constitutional Court, the holding of two elections, namely the Legislative Election and the Presidential Election which are held separately is contrary to the 1945 Constitution, where Article 22E states that regular elections, every 5 years are conducted to elect members of the DPR, DPRD, President and Vice President. .

With the issuance of the Constitutional Court Decree, Indonesia started a new experience from the implementation of elections

¹Syamsuddin Haris; Ramlan Surbakti; Saldi Isra, Ikrar Nusa Bakti, et al. *Pemilu Nasional Serentak 2009 (Position Paper)*, Jakarta: Electoral Institute LIPI, 2014. Page. 6.

in this pluralistic country. Responses that have subsequently emerged from efforts to implement a relatively new Election System in Asia include the assumption that simultaneous elections will minimize state funding. Whereas the simultaneous elections will have an impact on strengthening the commitment of political parties to coalitions permanently.

That in order to improve the implementation of the presidential government system in Indonesia, various efforts are needed, including reviewing the format of the representative system, the party system, and the system and implementation of the General Election. In the case of Election administration, rearrangement is not only related to the legislative election system, but also harmonizes the implementation scheme between the legislative and presidential elections. These things ultimately lead to the urgency of having simultaneous elections, apart from being the mandate of the 1945 Constitution after the amendments.

Based on the background described above, the problem formulation of this paper is: "How can the 2019 Concurrent Election be an effort to fix the Presidential system in Indonesia?"

B. DISCUSSION

1. Concurrent Election System

General Election or Election is the most important aspect of the implementation of democracy. Election is the most obvious means of exercising people's sovereignty. Elections, in principle, are carried out directly, publicly, freely, secretly, honestly and fairly or by LUBER and JURDIL. In the Unitary State of the Republic of Indonesia / NKRI which is based on Pancasila and the 1945 Constitution, the General Election must take place effectively and efficiently. Elections are usually held to elect people's representatives to occupy the legislative body and the president as the head of government, and in its implementation, elections to elect the president and people's representatives can be held simultaneously or separately.

Simultaneous General Elections or what is called "concurrent elections" by Benny Geys

defines as an electoral system that holds several elections at the same time.² Apart from being pioneered by the United States, this election system is also widely applied in developed democracies such as in Western Europe. In Southeast Asia itself, the Concurrent Election is not very well known, but the implementation can be seen in the Philippines. Although this election system is synonymous with developed democracies, in Latin America, this system is quite popular in socialist base countries, such as Brazil, Bolivia, Peru, and Venezuela.

Geys said that one of the advantages of the simultaneous election is its effect on the level of voter participation. The implementation of Concurrent Elections as happened in the United States, for example, shows how voters will be more enthusiastic about the Senate and Congress Elections if they are held simultaneously with the Presidential Election. On the other hand, according to Andersen, in addition to having advantages, simultaneous elections also have a negative effect on voter knowledge. The limited ability of "voters" in understanding who is right to be their choice, is one of the important issues that results in the tendency of voters to vote for the majority.³

In Indonesia itself, as with the hypotheses and empirical research of LIPI experts, it is possible that there are six models of simultaneous elections, including:⁴

- a. Simultaneous Election, which is held once in five years covering the legislature in all government structures, the Presidential Election and the Regional Head General Election.
- b. Concurrent Elections are limited to legislative positions, both central and regional, then followed by central and regional executive elections.

²Benny Geys, "Explaining Voter Turnout: A Review of Aggregate –level Research." In *Electoral Studies* 25 (2006): p. 652.

³David J. Andersen, "Pushing the Limits of Democracy: Concurrent Elections and Cognitive Limitations of Voters." PhD Dissertation, (New Jersey: The State University of New Jersey, 2011).

⁴Syamsuddin Haris (et al)., *Op., Cit.*, P. 19-20

- c. Election Simultaneously with by-election based on the level of national and regional government.
- d. National and local simultaneous elections at intervals of time.
- e. National simultaneous elections followed by local simultaneous elections
- f. Simultaneous elections to elect national and local legislatures and national executives, followed by executive elections at the local level.

Election System Chart and Legislative Support⁵

President ial Election Formula	The timing of the Legislative Election and the Presidential Election	
	Simultaneously (concurrent)	Separate (non-concurrent)
Plurality	Low multiparty rates. High linkages between the presidential and legislative elections	High Multiparty, there is no link between the presidential election and the legislative election
Majority Runoff	Moderate to high multiparty rates. High linkages between the presidential and legislative elections	Very high multiparty. There is no link between the presidential and legislative elections.

2. Presidential Government System

The Government System is essentially about the distribution of power and the relationship between the institutions that hold these powers. According to Sri Soemantri, the government system is concerned with the system of relations between the executive and legislative bodies.⁶ Based on the classification of Government systems by Giovanni Sartori, in this world, government systems can be divided into three forms: Presidential Government System, Parliamentary Government System and Semi-Presidential Government System.⁷

⁵Mark P. Jones. *Electoral Laws and the Survival of Presidential Democracies*. Notre Dame: University of Notre Dame Press, 1995.

⁶Sri Soemantri, *Perbandingan Hukum Tata Negara*, Bandung: Alumni Publishers, 1971. Hal. 81-82

⁷Giovanni Sartori in Robert Elgie. *From Linz to Tsebelis: Three Waves of Presidentials / Parliamentary Studies*, *Jurnal Democratization*, 12: 1. Hal. 106-122.

According to Arend Lijphart, there are three main elements in the Presidential system, namely: first: the President or Head of Government is elected for a fixed term of office (fixed term); second, the president is elected directly by the people or through an electoral college and third, the president is a single chief executive.⁸ He then categorized the presidential system to be more specific, namely executives run by one person, not a combination; executive elected directly by the people, and certain terms of office that cannot be revoked or abolished by a vote in Parliament.⁹

While referring to the post-amended 1945 Constitution, the Presidential system in Indonesia can be described as follows:¹⁰

- a. The President performs the functions of the head of state and head of government;
- b. The President is elected directly by the people, therefore the President is responsible to the people;
- c. The president does not submit to Parliament and vice versa the president cannot dissolve parliament;
- d. The President has a permanent term of office;
- e. The President is responsible for the Government

By understanding the conception of the Presidential System as above, at least it can be summarized in the chart below:

Presidential System	
Head of state	: President
Head of Government	: President
Cabinet	: Assistant President
Executive MP?	: Not
The executive can dissolve parliament?	: Not
Term of Office of Specific Executives?	: Yes
Parliament Overseeing the Executive?	: Not

⁸Arend Lijphart, *Sistem Pemerintahan Parlementer dan Presidensial*. (Jakarta: Raja Grafindo Persada, 1995). p. 14-17.

⁹Ibid.

¹⁰Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 1945*. Yogyakarta: FH UII Press, 2005., pp. 59-60.

Center of Power	:	There is no
Parliament governs its own affairs	:	Yes

From the above table chart, what is currently being embraced in our political system is that power is no longer in the highest state institution or that was previously handed over to the MPR as the inheritor of the President. The power structure is divided into high state institutions, thus there is no such thing as a center of power. In essence, the function of the Legislature is to supervise the executive, but with the position of the parliament today as the owner of the right "upon approval". Thus, the main function in state work still rests on the power of the President in terms of coordination between the two high state institutions.

It should be noted that the choice of the presidential system in the constitution was not based on the perfection of the system, but on the domestic situation and conditions at that time. Because the presidential system itself has weaknesses that can frustrate and reduce the effectiveness of the work of high state institutions. Among the weaknesses of the Presidential system as described by Mainwaring, one of which is the possibility of paralysis or political impasse between the executive and legislative branches, especially in countries with multiparty systems.¹¹ Then, the President cannot be replaced halfway, because his position has been arranged, even though his performance is not satisfactory. Meanwhile, Juan Linz's research sees that the Presidential system is not suitable for new democratic countries because the separation of legislative and executive powers tends to cause polarization.¹²

The problem that arose later was that Indonesia, which wanted to fully adopt the Presidential system, was in fact opening wide opportunities for the growth and emergence of

¹¹Scott Mainwaring, "Presidentialism, Multipartyism, and Democracy: The Difficult Combination", in *Comparative Political Studies*, Vol. 26, No. 2, 1993, p. 198-228.

¹²Juan J. Linz, "Presidential or Parliamentary Democracy: Does it Make a Difference" in Linz and Valenzuela, the failure of Presidential Democracy: Comparative Perspective, (Baltimore: John Hopkins University Press, 1994).

new political parties. This multiparty condition clearly becomes an obstacle to the implementation of the Presidential system as a whole. In order to solve the presidential and multiparty problems, based on the results of his research, Mark P. Jones suggested making an ideal combination of variables that might occur in a multiparty presidential system. Among these variables, among others:

- a. The plurality formula for selecting the executive / president
- b. Implementation of presidential and legislative elections simultaneously (concurrent)
- c. Proportional representation system (PR) in legislative elections
- d. The number of seats in the electoral district (dapil / distric) is moderate between five and eight
- e. A unicameral legislature, assuming the upper house (senate / upper house) is nominated through party affiliation as well as elections for the lower house.¹³

By looking at the combination of variables made by Jones, what must be done then is to test whether implementing the Concurrent Election system in which the Presidential System must be combined with multi-parties can be the right way to reform to strengthen the existing Presidential system.

3. Analysis of the Implementation of Concurrent Elections and Improvement of the Presidential System

To carry out simultaneous elections in 2019, the DPR first has a tough task in drafting a new Election Law. In fact, there are three things that are very crucial in the discussion of the draft Election Law, namely, first, the open proportional election system and the closed proportional election system; second, the threshold rules or what is called the threshold and finally the allocation of seats for legislative members in each electoral district.¹⁴ According to Syamsuddin Harris, several things that need to

¹³Mark P. Jones., Op., Cit. Thing. 41-45

¹⁴Janedri M. Gaffar, *Politik Hukum Pemilu*, Jakarta: Konpress Konstitusi, 2012, p. 28.

be considered in the making of the Election Law include:

1. The meaning of the implementation of simultaneous elections must be determined in advance, whether the five-square election so far has been understood by many parties, namely the Presidential and Vice Presidential elections, DPR, DPD and DPRD, or simultaneously in all executive and legislative branches at the national and local levels.
2. The number and form of ballots to elect the President and Vice President, DPR, DPD, Governor and Provincial DPRD, Regents and Walikora and Regency / City DPRD are of course very large and require clear information for prospective voters.
3. Voters need a lot of time in determining their choice from selecting the executive and legislative candidates from the center to the regions, which number hundreds of thousands of candidates.
4. Based on the points above, it is quite realistic if simultaneous elections nationally from the center to the regions are held at the same time as those applied in the Philippines.

Among the advantages of implementing the Presidential System as practiced in the United States for example, because the position of President is permanent, the stability of the executive government will be maintained. The presidential election system which directly by the people makes the people inherit the President so that the executive function is to maintain the mandate and legitimacy of the people and can create a cool democratic climate; as well as the strengthening of the roles of respective state institutions, namely the executive and legislative branches, thanks to the strict separation of powers between the two.

The conditions that are confused with the system in Indonesia are combining the presidential system with a multi-party system. Because in a presidential system, it is not easy for the President-elect to get strong support in Parliament. It is simple, because there are so many parties, it is not easy for one particular party to get a majority in Parliament, even though the power in Parliament that can support

the leadership of the executive is needed. In addition, too many parties also indicate the number of ideologies adopted by the community.¹⁵ According to Jayadi Hanan, the discussion on strengthening the Presidential system with multi parties is an effort to look at various variables that can help, including: ensuring sufficient support for the president in the legislature, reducing the number of parties in Parliament, reducing the possibility of divided government and strengthening and improving quality. government performance.¹⁶

Therefore, according to Hanand, the possible scenario in the 2019 Concurrent Election, if it is related to what is found by Jones's research, is that most parties will propose a candidate pair in the first round of the legislative election. Then, if there is a candidate who is very popular or competitive, it is possible that many parties will support the popular candidate. The conclusion from these various kinds of speculation, according to Hanand, is that Indonesia should ideally change its presidential election formula to become plurality.¹⁷

Maurice Duverger's hypothesis states that there is a relationship between the general election system and the party system where the plurality electoral system tends to produce a two-party system, while the proportional electoral system tends to produce a multi-party system.¹⁸ Therefore, in the case of Indonesia, a multi-party system should ideally be juxtaposed with a proportional election system.

Several previous research results found that the combination of the presidential election system with a plurality formula with simultaneous legislative elections tends to help simplify the party system. Meanwhile, Hanand's research results concluded that the

¹⁵ Joko J. Prihatmoko, *Mendemokratiskan Pemilu dari Sistem Sampai Elemen Praktis*. Yogyakarta: Pusat Belajar, 2008.p. 150.

¹⁶ Djayadi Hanan, *Memperkuat Presiensialisme Multipartai di Indonesia: Pemilu Serentak Sistem Pemilu dan Sistem Kepartaian*.p. 3.

¹⁷Ibid., P. 11

¹⁸Maurice Duverger. "Political Parties: Their Organization and Activity in the Modern State." London: Methuen, 1954.

implementation of simultaneous elections or the electoral system in general would not necessarily have a positive impact on strengthening the multiparty presidential system.

Mainwaring and Linz revealed that theoretically, presidential systems are difficult to combine with multi-party systems, because of the tendency for deadlocks between the executive and the legislature. The deadlock is because the legislature and executive are controlled by different parties, because of the tendency in a multi-party presidential system, the elected president does not have majority support in the legislature, because many political parties are members of the legislature.¹⁹ One of the biggest obstacles in the presidential government system is that it is not easy to find consensus between the executive and the legislature, even in the legislature itself when combined with a multiparty system.

The country's experience with the Presidential system and the implementation of simultaneous elections in the United States for example shows how important it is to manage the number of political parties. A multi-party system with diverse ideologies and visions and missions of political parties will inevitably complicate the implementation of the Simultaneous Election system. Because the number of political parties will cause the number of legislative candidates to be elected and possibly the number of candidates for President in the election. Proclaimed by the post-election political constellation, the composition of the Parliament which does not support the leadership of the President which is most vulnerable to occurring is a fact most often faced in countries with a Multiparty Presidential System.

Therefore, reforming the Presidential system in Indonesia in addition to efforts to hold simultaneous elections must also be accompanied by the ideal of uniting the vision and mission of parties with the ultimate goal of streamlining the number of political parties participating in the elections.

¹⁹Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination", in *Comparative Political Studies*, Vo. 26, No. 2, 1993. pp. 198-228.

Based on the observation that the possibility of occurring with the ideals of simultaneous elections can actually be an improvement in the Presidential System, at least this can be seen from the need for political parties to carry out a permanent coalition to win votes in the simultaneous elections. Ideally, a coalition that has to be built before the Election will not be affected by the post-Legislative Election political constellation, thus making the political map blurry. The coalition that was built from the very beginning before the Implementation of Concurrent Elections, will be formed with the same understanding in the desired expectations for winning the election both in the Legislative and in the executive. The party coordinated to win the Presidential Election, It also has an impact on the composition of the Parliament, which is likely to be controlled by the party that carries the presidential and vice presidential candidate pairs. This condition is expected to be different from the condition in the past where the party that won the legislative election was often different from the party that won the executive election, resulting in a deadlock between the Government and the DPR.

It is hoped that, if these conditions are achieved, the implementation of the Presidential System in Indonesia will begin to overcome one of its biggest obstacles, namely the occurrence of deadlocks between the legislature and the executive. In the end, a perfect presidential system is not impossible, but in order to make it happen, of course, it requires a long process and consistency between the power holders.

C. Closing

One of the great ideals of the intention to hold simultaneous elections in 2019 is one of which is to strengthen the Presidential System. Post-reform, with a series of amendments to the 1945 Constitution, the country's constitution eliminates the power of the MPR as the inheritance of the President, where the President is no longer responsible to the MPR, but to the people directly. To put it simply, the people have the most right to judge whether or not a President should return to lead with a maximum of two terms. The people also want to elect their

representatives at the same time as electing their leaders, and this is realized through the 2019 simultaneous elections.

For supporters of the holding of simultaneous elections, the benefits obtained from holding the elections for the people's representatives and the president are held simultaneously, among others, to reduce the cost of holding an unmitigated election to reach tens of trillions. In addition, simultaneous elections can also minimize costly politics, such as

campaigning to money politics. Simultaneous elections can also directly avoid the abuse of power of officials during their term of office or what is called the politicization of the bureaucracy, is an effort to avoid corruption, maintain national stability and streamline the work of the Government. Meanwhile, the results of this study indicate that the Concurrent Elections can be an effort to reform the Presidential system implemented in post-reform Indonesia.

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