

## Design of Simular General Elections After The Decision of The Constitutional Court

Dr. Wilma Silalahi, S.H., M.H

Universitas Tarumanagara, Jakarta, Indonesia

Email: [wilmasilalahi@fh.untar.ac.id](mailto:wilmasilalahi@fh.untar.ac.id)

*Abstract*--- With the pronouncement of the Constitutional Court Decision Number 55/PUU-XVII/2019, dated February 26, 2020, our election design can change or remain with the design of the simultaneous elections that we carried out in April 17, 2019. In this study, the author will use a normative approach with a post-positivism paradigm, that the formation of a statutory regulation must be by the mandate of Pancasila and the 1945 Constitution as the highest law in the statutory system, using normative juridical research methods or according to Wignjosebroto is doctrinal research. The obligation of legislators to determine and decide on the model/design of simultaneous general elections, but still concerning constitutional values based on the 1945 Constitution. However, the Constitutional Court also stated that in deciding the choice of models for the simultaneous implementation of general elections, legislators need to consider the interests, the implications for changes to the law, the time available for simulation before the changes are practical, calculating carefully all the technical implications of the choice of models available to realize quality general elections, taking into account the convenience and simplicity for voters, and do not frequently change the model of direct elections which are held simultaneously so that certainty and stability in the implementation of general elections are built.

*Keywords*--- Democracy Constitution Court; Elections Simultaneously.

### Introduction

Sovereignty is in the hands of the people and implemented according to the 1945 Constitution. The meaning of "sovereignty is in the hands of the people", namely that the people have sovereignty, responsibilities, rights, and obligations to democratically elect leaders who will form a government to manage and serve all levels of society. , and elect representatives of the people to oversee the running of the Government. The embodiment of people's sovereignty is carried out through elections as a means for the people to elect a leader through the election of the president and vice president who are elected in one pair directly and elect their representatives who will carry out the functions of carrying out supervision, channeling the people's political aspirations, making laws as the basis for all parties in the Unitary State of the Republic of Indonesia in carrying out their respective functions, as well as formulating revenue and expenditure budgets to finance the implementation of these functions.

Marcus argues that Indonesia's Constitutional Court has played a significant role in that country's transformation from a violence-prone polity into Southeast Asia's most stable democracy. The Court has advanced institutional conflict resolution mechanisms and expanded democratic rights—two achievements identified by Linz and Stepan as significant indicators of consolidating democracy. Building on models developed by Ginsburg and Horowitz, my analysis also illustrates why the Court has been able to defend its autonomy and become an agent of democratization. While sharing Ginsburg's emphasis on high levels of power diffusion as a critical reason for the Court's success, this article moves beyond such an approach. Most importantly, it suggests that the judges' "judicial activism"—as expressed in several controversial but popular decisions—increased Indonesian society's support for the Court to such an extent that it has now become largely invulnerable to attempts of external intervention (Marcus; 2010).

The Indonesian people aspire to elections are democratic elections, namely, based on the principles of direct, general, free, confidential, honest and fair, and held every five years. According to Ramlan Surbakti, that democratic elections are related to goals and methods. Since democracy is the goal, holding elections must also be democratic. Thus, simultaneous elections can be viewed in terms of effectiveness (effectiveness) and efficiency (efficiency).

With the pronouncement of the Constitutional Court Decision Number 55/PUU-XVII/2019, dated February 26, 2020, it is possible or not to change the design of the election in the Republic of Indonesia. However, the decision of the Constitutional Court may result in a change in the state administration system of the Indonesian nation. Thus, it is deemed necessary to conduct research that will examine how legislators will design an ideal design that will be used by the Indonesian people in the 2024 General Election after the Constitutional Court Decision Number 55/PUU-XVII/2019, whether they still use the simultaneous elections for members of the DPR, DPD, President and Vice President, as well as DPRD as have been carried out in the 2019 simultaneous elections or not the implementation of elections with other designs such as the model of simultaneous elections whose constitutionality can still be assessed based on the 1945 Constitution. There is six model of Common Public Election by the Constitutional Court:



Image: Constitutional Court Decision Number 55/PUU-XVII/2019

After searching the literature, the internet, and other publications, it was found that research with a focus on simultaneous general election design studies after the decision of the Constitutional Court Number 55/PUU-XVII/2019 only found a book written by the author himself, namely Wilma Silalahi, with the book title "Design Simultaneous Election Dispute Resolution".

#### Research Method

This study uses a normative approach with a post-positivism paradigm, that the formation of a statutory regulation must be by the mandate of Pancasila and the 1945 Constitution as the highest law in the statutory system. This research uses normative juridical research methods or according to Wignjosebroto is doctrinal research, namely research that uses positivist legis, which states that law is identical to written norms made and promulgated by authorized institutions or officials. In addition, law is seen as a normative system that is autonomous, closed, and detached from people's lives. Satjipto Rahardjo said that this research is looking at the law as an abstract regulation, its attention will be focused on a genuinely autonomous institution, which we can talk about as a separate subject, regardless of its relation to things outside the regulation. The focus will lead to a normative method and by the analytical discussion, so this method is called normative analysis.

#### Data Collection

The authors add data collection techniques through library studies (library study) as a reinforcement. The literature study or document study referred to here is researching or exploring legal materials or written data, in the form of laws and regulations, court decisions,

documents, books, literature, journals, magazines, news, websites, articles, papers, newspapers, and other legal materials related to the central theme chosen in the writing of this journal. Opinions of experts in the fields of law and political science through various media (books, articles, etc.) will also be presented as references to support the empirical data obtained to support and enrich the writing of this journal.

According to Jimmy Asshiddiqie, when it comes to the study of constitutional law, it is stated that in general what are recognized as sources of law are: (1) the constitution and written legislation; (2) judicial jurisprudence; (3) constitutional conventions; and (4) certain international laws. In addition to these four sources, Jimmy Asshiddiqie also mentions three other sources of law that can be used as references in making legal decisions, namely: (1) legal values and norms that exist as an unwritten constitution; (2) certain normative habits that are recognized both in regular legal traffic, and (3) scientific doctrines who have been recognized as *ius comminis opinio doctorum* among experts who have generally recognized authority.

## Concept Theory

In this paper, the author uses the theory:

### 1. Democratic State Theory

Democracy comes from the Greek word, namely "demokratia", which comes from the word "demos" which means: "the people", and "Kratos" which means: "power or power". So that it can be defined "people's power". According to Beetham (1993) the concept of democracy as "mode of decision-making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement to be that where all members of the collective enjoy effective equal rights to take part in such decision making directly – one, that is to say, which realizes to the greatest conceivable degree the principles of popular control and equality in its exercise...". The emergence of democracy in Athens changed Greek society around the 6th century BC by a statesman and poet, Solon. Solon's contribution to society Athens was so great through Solon's Constitutional Reform, namely regarding the right to file an objection (appeal), where the people were actually given their greatest power, namely the Government of the people. This is the forerunner of a new politics in Athenian society, known as democracy.

According to Henry B. Mayo, democracy includes several norms or values, namely: (i) peaceful and institutional dispute resolution; (ii) peaceful change takes place in a changing society; (iii) regular change of leadership; (iv) limiting the use of force to a minimum; (v) recognition and respect for diversity and guarantees of law enforcement. In line with Mayo, the definition that has been elaborated by Carter and Herz and quoted by Miriam Budiardjo, states that democracy is a characteristic that must exist in a democratic country. First, these

characteristics include restrictions on government actions to protect individuals and groups by arranging periodic leadership changes. Second, there is an attitude of tolerance for opposing opinions. Third, equality before the law which is implemented with an attitude of submitting to the rule of law without distinguishing between social, economic, and political positions. Fourth, is the existence of free elections accompanied by an effective model of representation. Fifth, there is the freedom to participate for political parties participating in the election. Sixth, is respect for the people's right to express their views. Seventh, developing and respecting minority rights.

Meanwhile, Hans Kelsen put forward the definition of democracy as follows:

"Democracy means that the will which is represented in the legal order of the State is identical with the wills of subjects. Democracy is a system in which political management is carried out on the basis of participation and pluralism, and there are protective mechanisms for limiting power. O'Donnell said that in a democracy, there is equality between citizens in the affairs of the state. O'Donnell sees the important position of citizens in the state because citizens have equality and responsibility in state affairs. In more detail, this includes the rights and equal treatment in making choices and the obligations of the authorities to carry out these choices. In this case, O'Donnell underlined the importance of "citizen equality" and "ruler accountability".

Meanwhile, according to Miriam Budiardjo, in a democracy there must be tolerance for opposing parties and a neutral, the non-discriminatory rule of law. Seymour Martin Lipset (1995) formulated three basic cores of democracy in a country, namely: first, "Competition" to fill political positions through fair elections, which are conducted regularly within a clear timeframe; second, the participation of citizens in electing state officials and forming political policies; and third, the existence of freedom felt by all citizens to ensure the integration of political competition and participation. At the conceptual level, democracy prioritizes the existence and importance of pluralism in society. On the other hand, democracy cannot be realized if it is accompanied by absolutism and an attitude of wanting to be right or win for yourself. Democracy requires mutual trust (mutual trust) and mutual respect (mutual respect) between citizens under a larger goal, namely the public benefit. The compromise process based on mutual trust and mutual respect in the social contract determines national ideals and principles of national life and the administration of an independent and sovereign state.

Robert A. Dahl, does not use the word democracy but uses the word "polyarchy" to refer to a system of Government that fulfills three conditions, namely: (i) broad competition among individuals and groups, such as political parties; (ii) people's political participation to elect leaders; and (iii) the degree of civil and political freedom. According to Dahl, democratic

Government aims to maximize the development of each individual and is responsible to the community.

M. Amin Rais proposed 10 (ten) criteria for democracy, namely: (1) participation in decision-making; (2) equality before the law; (3) equitable distribution of income; (4) equal educational opportunities; (5) recognition and appreciation of the four kinds freedom (freedom of expression, freedom of mass media, freedom of assembly, freedom of religion); (6) availability and disclosure of information; (7) heeding fatsoen (manners); (8) individual freedom; (9) spirit of cooperation; and (10) the right to protest.

According to Arend Lijphart, a country is a democracy if it is filled with the following elements:

1. There is the freedom to form and become members of associations;
2. There is freedom of expression;
3. There is a right to vote in voting;
4. There is an opportunity to be elected or occupy various Government or state positions;
5. There is a right for political activists to campaign for support or votes;
6. There are various sources of information;
7. There are free and fair elections;
8. All institutions tasked with formulating government policies must depend on the people's will.

According to Lijphard, one of the elements that must be fulfilled by a democratic country is the necessity of having elections to elect certain state administrators freely and honestly. Elections do not just show the relationship between the elect and the elected. Moreover, elections imply the relationship that the elected are accountable to the electorate. There is no democratic government that is not accountable to the electorate. Meanwhile, to realize an electoral system based on constitutional equality, according to Hilaire Barnett, elections must be based on 4 (four) principles:

- a) that there is a full franchise, subject to limited restrictions;
- b) that the value of each vote cast is equal to that of every other vote;
- c) that the conduct of election campaigns is regulated to ensure legality and fairness;
- d) that the voting system is such as to produce both a legislative body representative of the electorate and a government with sufficient democratic support to be able to govern effectively.

The International Commission of Jurists, which is an organization of international legal experts at a conference in Bangkok on February 15-19 1965 has expanded the concept of the rule of law, and emphasized what it calls "The Dynamic Aspects of the Rule of Law in the Modern Age". One of the important decisions of the conference was the stipulation of the primary conditions for the implementation of a democratic government under the rule of law, which stated, among other things:

1. Constitutional protection, in the sense that the constitution, apart from guaranteeing individual rights, must also determine the procedural way to obtain the protection of guaranteed rights;
2. Independent and impartial tribunals;
3. Free elections;
4. Freedom of expression;
5. Freedom of association/organization and opposition; and
6. Civic education (civic education).

In addition to formulating the idea of the rule of law in the context of new developments, the International Commission of Jurists also provides a formulation on democracy as a political system. According to the International Commission of Jurists, what is meant by a democratic political system are: "A form of Government in which the right to make political decisions is exercised by citizens through representatives elected by them and accountable to them through a free electoral process (a form of Government where the citizens exercise the same right [namely: the right to make political decisions] but through representatives chosen by them and respond to them through the process of free election.

David Miller further stated that in modern society, political equality is a basic symbol of human equality as members of a community. Everyone who is served unfairly will feel a loss of "self-respect" (self-respect). John Rawls stated that every political decision must emphasize equal rights in political participation so that everyone feels respect for himself. According to John Pieris, that a democratic state is a state based on law, which guarantees human rights, political freedom, freedom of expression and difference of opinion, limitations and accountability of power, existence of a fair, just and free judiciary, as well as the channeling of wills. The majority and securing the will of the minority. A democratic state based on law basically rejects the system of concentration of power in one hand or a group of rulers, also rejects the conglomeration of power which essentially kills the political rights of the people and other communities. In other words, a democracy based on law is actually a "defeudalization" in all the life of the nation, especially in political life, bureaucracy, and Government as a whole. Therefore, the democratic process that occurs in all aspects of the life of the nation and state must be realized through open accountability (accountability) from the rulers or state leaders.

According to Masudi, every country that adheres to democracy must meet the following requirements:

1. The requirements of democracy in the formal sense include:
  - a. The existence of a system of representation through representative institutions;
  - b. The existence of a system for filling in the membership of the people's representative institutions through free and secret elections;
  - c. The existence of a political infrastructure system that allows the people to participate in politics
  - d. The existence of an institutional system that has the task of implementing and being accountable to the people through the people's representative institution;
  - e. There is a free and open decision-making system.
  
2. The requirements of democracy in a material sense, include:
  - a. The existence of freedom of thought and expression;
  - b. There is freedom of assembly and freedom of association;
  - c. The existence of independence to fulfill a decent living for humanity;
  - d. There is equality before the law and in politics;
  - e. There is recognition of human rights.

Maurice Duverger emphasized that the only democratic way to fill the membership of the people's representative institutions is through elections. The method of combination or mix between democratic and autocratic is the method of appointment, while filling in the membership of the people's representative body in another way is an autocratic method. Conceptually, according to Miriam Budiardjo, in a democratic country, the Government's power is limited by the constitution (UUD) and is usually called constitutional Government. So according to Koopmans, a democratic state is a reflection of a state that adheres to the "theory of popular sovereignty". Sovereignty is a concept related to the function of power in a country ("De term soevereiniteit, betrekking hobben op de gezagsfunctie van de staat").

## Results and Discussion

### 1. Background of the Birth of the First Simultaneous Election in 2019

Elections as the embodiment of a democratic system are an ideal means or mechanism in the framework of a peaceful and orderly transition of power. By holding elections, it is highly expected that the process of power transfer in a country will run well and smoothly and in accordance with the people's sovereignty. In organizing elections to obtain ideal results, the identity of the Indonesian nation which is manifested in the values of Pancasila must be



strengthened in order to create national unity and integrity under the basic philosophy of the Indonesian state, which must give up personal interests by advancing the public interest.

The Indonesian nation in the implementation of elections, if the values of Pancasila are strengthened, it is certain that the process of organizing and conducting elections will be by the interests of the Indonesian people, because Pancasila as a unifying nation has dimensions inherent in Pancasila itself, including reality, ideals, and flexibility. So, according to Arief Hidayat, Pancasila remains actual, relevant, and functional as the basis for the spirit of *Bhinneka Tunggal Ika*. Based on Pancasila, the Indonesian nation will not only create individual justice, it will create and enforce social justice for the entire community. And still according to Arief Hidayat, in the perspective of the legal system, Pancasila makes the Indonesian legal system different by taking both sides of the concept of *Rechtsstaat* and the Rule of Law. Pancasila must make Indonesian law integrate the objectives of substantial justice (substantive justice) and legal certainty (procedural justice).

Thus, if Pancasila is not fully realized in the implementation of elections, the truth and interests of the people will be challenging to achieve, election participants will only always justify themselves or seek victory in various ways and override the law (supremacy of law), which results in not complying with Article 1 paragraph (3) of the 1945 Constitution which states that "the Indonesian state is a state of law", so they seek the truth through their own interpretation. For this reason, the supremacy of morality is urgently needed, namely the moral enforcement of election participants to create democratic elections based on Pancasila and the 1945 Constitution on the basis of divinity, populism, and morals.

If a democratic election is achieved, there will be legal certainty in the implementation of the election. Democratic elections are held to elect members of the legislature and executive. According to the provisions of the 1945 Constitution, what is included in the electoral regime is the election of members of the DPR, DPD, and DPRD, as well as the election of the President and Vice President. In practice so far, the election of members of the DPR, DPD, and DPRD is placed in one regime which is often termed legislative elections. Likewise, the presidential and vice-presidential elections are also placed and held separately in the presidential and vice-presidential election regime. The initial election was only intended to elect members of representative institutions, namely the DPR, DPD, and DPRD. After the IV amendment of the 1945 Constitution in 2002, the election of the President and Vice President, which was originally conducted by the MPR as the highest state institution, was agreed to be carried out directly by the people as the holders of sovereignty, so that the presidential election was included in the electoral regime.

Syamsuddin Haris et al., stated the reasons for merging the legislative election with the presidential election, among others: first, the merger can be expected not to cause problems related to the rationality of voters in making choices. Therefore, voters will remain focused

on choosing to elect officials at the national level. Voters can also make choices based on the national issues and the correlation of issues raised by candidates for legislative and executive members. Second, the workload for administering elections that have been piled up in legislative elections can be shared equally with other general elections. By separating the national legislative elections from the regional legislatures, part of the workload has been set aside, so that the implementation of elections will be maximized with improved quality. Third, there will be budget savings in the implementation of elections. With simultaneous national elections and simultaneous local elections, the cost of holding, which was initially for two elections can be saved to only one election.

In addition, Mark Pyne concludes that simultaneous elections tend to be successful in avoiding the formation of a "divided government". Where simultaneous elections are considered to be able to present a "coattail effect". In a sense, voters in the presidential election tend to choose political parties that support the presidential/vice-presidential candidates in the legislative elections. The phenomenon of divided Government is what makes the implementation of the presidential system ineffective, precisely because of the weak support of the parliament. Shugart, in his thesis also states that if the timing of the presidential election is synchronized (simultaneously) with the legislative election, it will cause a coattail effect, namely the (result) of the presidential election will affect the (result) of the election of legislative members. That is, there is a significance for the choices made by the people in the presidential election with their choice of political parties in the legislative elections. Cheibub's findings also strengthen Shugart's thesis, which concludes that the ineffectiveness of a government as a result of a divided government in a presidential government system is not only because there are too many effective political parties and do not apply a majoritarian electoral system in electing members of the legislature, but also as a result of presidential and member elections. legislature at the same time.

Simultaneous elections (concurrent elections) can simply be defined as an electoral system that holds several elections at one time simultaneously. The types of elections include executive and legislative elections at various levels known in the country concerned, ranging from national, regional to local level elections. In the European Union's member states, simultaneous elections even include holding elections at the supra-national level, namely the election of members of the European parliament simultaneously with national, regional or local elections. Simultaneous elections can also be said to be a merger of executive and legislative elections in one stage of implementation, especially the voting stage. The goal is to create a congruent government or avoid a divided government in the form of a majority of parliamentary seats that are not owned by the party or coalition of parties that carries the elected president.

In the theoretical realm, the concept of simultaneous elections is a political policy to combine the implementation of legislative elections and executive elections in one voting day. In the

context of comparative political systems that are developing, the concept of simultaneous elections is only known in countries that adhere to a presidential system of Government. Because, in this system, both members of the legislature and executive officers are elected through elections. In contrast to the parliamentary system of Government, where legislative elections automatically produce executive officials. This is because the political parties or coalitions of political parties that win the election control the majority of parliamentary seats so that they can form a government.

The Constitutional Court wanted to implement simultaneous elections in the 2014 general elections, but due to the remaining time period between the Court deciding on the implementation of simultaneous elections on January 23, 2014 and the holding of elections which made it impossible to conduct elections properly and comprehensively, the Constitutional Court decided to hold simultaneous elections. Implemented in 2019 with the consideration that all election administration instruments and political infrastructure are in a ready position, without compromising the constitutionality of the 2014 elections.

## 2. Evaluation of the Implementation of the 2019 Simultaneous Elections

Ramlan Surbakti describes the implementation of the 2019 simultaneous elections as follows: first, the time available for the KPU to plan, implement, and control the implementation of all stages of the election can be said to be very adequate; and the making of all implementing regulations for each stage and the procurement and distribution of all voting and vote-counting equipment can be carried out within the available time. However, the KPU's work volume is substantial; The KPU must carry out two years of work in one year. Second, the political parties participating in the general election carry out four activities at once: building an agreement with other parties regarding the pairs of presidential and vice-presidential candidates; identify, select, and determining the list of candidates for members of DPR, Provincial DPRD, and Regency/Municipal DPRD; formulate the party's vision, mission, and programs as campaign materials; formulate campaign strategies and seek election campaign funds; and carry out election campaigns for both the presidential and vice-presidential elections as well as the elections for members of the DPR and DPRD.

Third, the implementation of the election campaign is dominated by: (a) the presidential and vice-presidential election campaigns rather than the election campaigns for members of the DPR, DPD, and DPRD; (b) election campaigns for issues of national government affairs by both pairs of presidential candidates rather than issues of regional government affairs (regional autonomy); and (c) competition between candidates from the same party in the same electoral district rather than competition between political parties participating in the election. In short, the program or policy plan to be realized by the political parties participating in the election is not at all clear. Fourth, the time available for voters to search for and process information and cast their votes (to vote for five election participants and

candidates) at the TPS was relatively smooth and timely. The competition between the two pairs of presidential candidates generated interest and voter participation.

Fifth, problems arise in the process of counting votes at TPS. Counting votes one by one from five types of elections, both political parties and candidates' names transparently (in front of witnesses, TPS supervisors, observers, voters, and members of the public) will undoubtedly take a long time. Indonesia is the only democracy globally that conducts voting and vote counting at each polling station openly. This practice is the best practice in democratic elections. However, the time and effort required are very long and therefore very tiring not only in the process of counting votes but also in compiling the Official Report and Certificate of Vote Count Results (C1) for the five types of elections, and compiling Copies of the Official Report and Copies of the Certificate of Vote Counting Results for the five types of elections. elections that will be given to election witnesses, both present and absent (16 witnesses of parties participating in the national election multiplied by three, 2 witnesses for presidential candidate pairs, and dozens of witnesses for candidates for DPD members, and the implementing committee (PPK, PPS, and staying at KPPS) It is not known how many of the 7 KPPS members are able to compile the Official Report and Certificate of Vote Count Results. All these minutes and certificates must be wet (written by hand, not photocopied).

Sixth, simultaneous elections every five years will cause the chairman and members of the KPU, Provincial KPU, regency/municipal KPU, and KPU employees; the chairman and members of Bawaslu, provincial, district/city, and Bawaslu employees; and the chairman and members of the DKPP are unemployed for the remainder of their term of office but receive honorary money after the general election. Simultaneous elections every five years are not only a waste of human resources, but also a waste of funds. Seventh, the process of resolving disputes over the results of the presidential and vice-presidential elections by the Constitutional Court is more widely reported by the mass media than the resolution of disputes over the results of the legislative elections. In fact, resolving disputes over the results of the legislative elections is actually much more complex than the disputes over the results of the presidential and vice-presidential elections, although they are not widely reported by the mass media.

Eighth, the accountability of election participants can be effectively demanded by voters only once every five years. On the other hand, election participants are only required to account for their performance once every five years. Ninth, the separation of holding national elections from holding regional elections is far more secure for democracy than simultaneous elections.

### 3. The Ideal Design of the 2024 Election After the Constitutional Court Decision

According to Khairul Fahmi, the simultaneous election of the presidential election with the election of members of the DPR and DPD should be maintained. This is because it is this

simultaneousness that has a real impact on the strengthening of the presidential system as referred to by the Constitutional Court in Decision Number 14/PUU-XI/2013. Moreover, the mechanism of checks and balances is expected to occur between the state government power held by the President and the legislative power held by the DPR. Meanwhile, the simultaneous election of the presidential election with the election of members of the provincial DPRD and district/city DPRD has almost no impact on the balance of power between the president and the legislature. This is because the relationship between the president's power and the power of the DPRD is not horizontal but a vertical one. Therefore, the reason for strengthening the presidential system by synchronizing the presidential election with the election for DPRD members is actually irrelevant. This can also be read clearly in consideration of the Constitutional Court in Decision Number 14/PUU-XI/2013, where the strengthening of the government system referred to by the Court is the relationship between the President's power and the DPR, and does not discuss DPRD at all.

Still according to Khairul Fahmi, the design of the simultaneous presidential election with the election for legislative members is a constitutional issue that is within the MK's authority to decide. This is because the design relates to strengthening the presidential system as regulated by the 1945 Constitution, strengthening regional autonomy; and state guarantees of the purity of suffrage as a fundamental right of citizens. In such a constitutional framework, the interpretation of the original intent of Article 22E paragraph (2) must be reviewed and accompanied by an affirmation of the need to separate the presidential election and the election for members of the national legislature from the election for members of the provincial DPRD and regency/city DPRD. Meanwhile, the electoral system and the design of the election for members of the Provincial DPRD and Regency/Municipal DPRD are the authority of the legislators to determine them. This authority must be based on the agenda for strengthening regional autonomy as required by Article 18 of the 1945 Constitution. However, when the legislators determine that the elections are carried out directly, the principles of elections, the design of their administration and the organizing institutions must also comply with the election provisions in Article 22E. 1945 Constitution.

Regarding the design of the election in the future, many gave different opinions. The President/Government, in his statement at the trial at the Constitutional Court emphasized that Article 22E paragraph (1) of the 1945 Constitution does not at all stipulate that general election must be held simultaneously or not simultaneously, it is clear that general elections must be carried out directly, publicly, freely, secret, honest and fair every five years to elect the President and Vice President, members of the DPR, DPD, and DPRD, thus regulating the simultaneous/non-simultaneous conduct of general elections to elect the President and Vice President, members of the DPR, DPD, and DPRD is an open legal policy arrangement. And even if the simultaneous general election based on the a quo Law being tested will be changed in the future to be back again not simultaneously between the general election of

the President and Vice President, members of the DPR, DPD, and DPRD, then the change is carried out through revision of legislation (legislative). review) and not through a judicial review at the Constitutional Court, considering that the rule of law regarding general elections is one of the most dynamic areas of law, and therefore it is inappropriate if the simultaneous determination of whether or not an election is to be held depends on the decision of the Constitutional Court, but should be the authority of the establishment. The law, in this case, the DPR and the Government, is based on the needs of the state, and society, and takes into account the factors of security, order, and efficiency.

The President/Government thinks that the implementation of the general election will still be carried out simultaneously by taking into account the efficiency of time and budget and the effectiveness of the election administration. Meanwhile, philosophically, the holding of elections should be a means for the people to realize their sovereignty in order to achieve national goals and objectives, as stated in the preamble to the 1945 Constitution. In addition to meeting the election principles as stipulated in Article 22E paragraph (1) of the 1945 Constitution, to gain electoral legitimacy and a government formed from election results. Likewise, sociologically, simultaneous elections follow the dynamics of social life in an increasingly complex society, where people are currently more enthusiastic about practical matters, both in terms of budget and time. In the 2019 simultaneous elections, the public's response to participating in the elections was higher than the 2014 elections, this indicates that the public can accept the simultaneous elections.

According to the Constitutional Court in its Decision Number 55/PUU-XVII/2019, dated February 26, 2020, it is of the opinion that, as part of strengthening the presidential government system, simultaneous general elections by means of simultaneous general elections for members of representative institutions (DPR, DPD, and DPRD) with the general election for president and vice president is still open to the possibility of being reviewed and reorganized, which can be done as long as it does not change the basic principle of simultaneous general elections in the practice of presidential government systems, namely maintaining the general election to elect members of the people's representative institutions at the central level (i.e. DPR and DPD). ) with the election of president and vice president. Simultaneous general elections to elect members of the people's representative institutions at the central level with elections for president and vice president is a logical consequence of efforts to strengthen the presidential system of Government.

In the Court's Decision Number 55/PUU-XVII/2019, the Court is of the opinion that, referring to the original intent regarding simultaneous general elections; linkages between simultaneous general elections in the context of strengthening the presidential government system; and explore the meaning of simultaneous general elections in the Decision of the Constitutional Court Number 14/PUU-XI/2013, there are a number of options for

simultaneous general elections models that can still be judged constitutional based on the 1945 Constitution, namely:

1. Simultaneous general elections to elect members of DPR, DPD, President/Vice President, and members of DPRD;
2. Simultaneous general elections to elect members of DPR, DPD, President/Vice President, Governor, and Regent/Mayor;
3. Simultaneous general elections to elect members of the DPR, DPD, President/Vice President, DPRD members, Governors, and Regents/Mayors;
4. National simultaneous general elections to elect members of DPR, DPD, President/Vice President; and some time after that local simultaneous general elections are held to elect members of the Provincial DPRD, Regency/Municipal DPRD members, the election of Governors, and Regents/Mayors;
5. National simultaneous general elections to elect members of DPR, DPD, President/Vice President; and some time after that there will be simultaneous provincial general elections to elect members of the Provincial DPRD and elect governors; and then some time after that simultaneous district/city elections are held to elect members of the Regency/City DPRD and elect the Regent and Mayor;
6. Other options as long as they maintain the simultaneous nature of the general election to elect members of the DPR, DPD, and the President/Vice President.

Thus, according to the Court, the determination of the model to be chosen is the area for the legislators to decide. However, in deciding the choice of model for the simultaneous implementation of general elections, legislators need to consider several things, among others, namely: (1) the selection of models that have implications for changes to the law is carried out with the participation of all parties who have an interest in organizing elections. general; (2) the possibility of changes to the law on the choice of models to be carried out earlier so that there is time for simulation before the changes are really effective; (3) legislators carefully consider all technical implications of the available model choices so that their implementation remains within the limits of reasonable reasoning, especially to realize quality general elections; (4) the choice of model always takes into account the convenience and simplicity for voters in exercising their right to vote as a form of implementing popular sovereignty; and (5) not frequently changing the model of direct elections which are held simultaneously so that certainty and stability in the implementation of general elections are built

Furthermore, based on the agreement of the DPR, the Government, and the election organizers at the Working Meeting and Hearing Meeting regarding the Determination of the Schedule for the 2024 Simultaneous Election which was held at the Nusantara Building, Senayan, Jakarta, on Monday, January 24, 2022, it was agreed that the holding of the general election for the electing the President and Vice President, members of the DPR, Provincial

DPRD, Regency/Municipal DPRD, and members of the DPD will be held on Wednesday, February 14, 2024. Meanwhile, simultaneous national voting in the Election of Governor and Deputy Governor, Regent and Deputy Regent, as well as Mayor and Deputy Mayor, held on Wednesday, November 27, 2024

## Conclusion

Regarding the design of the 2019 simultaneous elections, namely simultaneous elections to elect members of the DPR, DPD, President/Vice President, and DPRD members, it can still be carried out for the 2024 elections as long as evaluations or improvements are carried out, including: (1) towards readiness and the professionalism of the human resources of election organizers; (2) need simplification related to logistics; (3) simplification of teaching aids for voting for voters; and (4) other evaluations related to the implementation of elections.

Through its Decision Number 55/PUU-XVII/2019, the Constitutional Court provides a choice of a general election simultaneous model that can still be judged constitutional based on the 1945 Constitution. So it is the task of legislators in determining the chosen model. However, the Court also conveys a message to legislators, in deciding the choice of models for the simultaneous implementation of general elections, legislators: (1) need to consider the model to be chosen, the implications for the implementation of elections must be considered; (2) if changing the model of simultaneous elections, it must be carried out in advance so that simulations can still be carried out; (3) must pay attention to all the technical implications for realizing quality elections; (4) must take into account the convenience and simplicity for voters; (5) and do not often make changes to the model of simultaneous elections to provide a sense of legal certainty. If the legislators deem it necessary to change the design of the simultaneous general election, it is urgent to stipulate laws and regulations that accommodate these changes, based on the values of Pancasila and the 1945 Constitution.

As long as the election organizers or parties with interest in organizing elections can commit and agree to improve the implementation of elections in 2024, according to the author, the Indonesian people will continue to use the designs that have been implemented in the 2019 elections, namely simultaneous general elections to elect members of the DPR, DPD, the President/Vice President, and members of the DPRD. This is intended so that the Indonesian people do not change the design/model of the election implementation intermittently. If a design change is made, it will change our government system. Let the Indonesian people be responsible and committed to conducting elections with more responsibility and integrity. Errors or shortcomings in implementing the previous years' elections are lessons learned or efforts to improve the next election. Give trust to the state to make improvements to mistakes in the previous election. The state will create an ideal election design or model for the progress of the Indonesian people and nation in accordance with the mandate of Pancasila and the 1945 Constitution.



## References

- Afan Gaffar, "Demokrasi Politik", Makalah, *Seminar Perkembangan Demokrasi di Indonesia Sejak 1945*, Widyagraha-LIPI, 24-25 Mei 1993.
- Afan Gaffar, *Pembangunan Demokrasi Untuk Indonesia Baru, Pemilihan Presiden dan Penciptaan Mekanisme Checks and Balances*, 20 Maret 2000.
- Akbar, D., Setiawan, A., Prayuda, R., Putra, A., Aznor, A., & Yudiatmaja, W. E. (2020). Community Preparedness on Transboundary Oil Spill Governance in Bintan Island. In *Journal of Physics: Conference Series* (Vol. 1655). IOP Publishing Ltd. <https://doi.org/10.1088/1742-6596/1655/1/012144>.
- Arend Lijphart, *Electoral System and Party System; A Study of Twenty-Seven Democracies 1945-1990*, New York, Oxford University Press, 1994.
- Arend Lijphard, "Democracies", dalam Bagir Manan, 1995, *Pemilihan Umum Sebagai Sarana Mewujudkan Kedaulatan Rakyat*, Program Pascasarjana UNPAD, Bandung.
- Arief Hidayat, *Revitalisasi Ideologi Pancasila Dalam Aras Global Perspektif Negara Hukum*, Seminar Nasional Hukum, Volume 3 Nomor 1, Tahun 2016, Fakultas Hukum, Universitas Negeri Semarang.
- Bambang Sunggono, *Metodologi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 1997.
- Benny Geys, "Explaining Voter Turnout: A Review of Aggregate-Level Research," Dalam *Electoral Studies* 25, 2006. Bung Hatta, 1957.
- Daniel P. Huntington, "Gelombang Demokratisasi Ketiga", terjemahan dari "The Third Wave: Democratization in The Late Twentieth Century", Jakarta: Midas Surya Grapindo, 1991.
- David Beetham, *Liberal Democracy and the Limits Democratization in Held, David (ed.). Prospects for Democracy*, North, South, East, West. Stanford University Press, 1993.
- David J. Andersen, *Pushing the Limits of Democracy: Concurrent Elections and Cognitive Limitations of Voters*. Ph.D. Dissertation, New Jersey: The State University of New Jersey, 2011.
- David Miller, "Democracy and Social Justice", Dalam Piere Birnbaum, Jack Lively and Geraint Parry, (Ed). *Democracy, Consensus and Social Contract*, London: Sage, 1978.
- David Miller dan Larry Siedentop, (ed.), *Politik dalam Perspektif Pemikiran, Filsafat dan Teori*, Jakarta: Rajawali Press, 1986.
- David Samuels, "Concurrent Elections, Discordant Results: Presidentialism, Federalism, and Governance in Brazil", Dalam *Comparative Political Studies* 33 (1).
- D.L. Morgan, *Focus Groups as Qualitative Research*, London: Sage Publication, 1998
- Guillermo O'Donnel, Philippe Schmitter, dan Laurence Whitehead (ed), *Transition from Authoritarian: Prospect for Democracy*, London: The John Hopkins University Press, 1986.

- Hans Kelsen, *General Theory of Law and State*, New York: Russell and Russell, 1961.
- Henry B. Mayo, *An Introduction to Democratic Theory*, New York: Oxford University.
- Hilaire Barnett, 2002, *Constitutional & Administrative Law*, Cavendish Publishing Limited, London.
- Jack Lively, *Democracy*, Oxford: Basil Blackwell, 1975.
- Janedjri M. Gaffar, *Rekonstruksi Kewenangan Mahkamah Konstitusi Dalam Menangani Perkara Pemilihan Umum Untuk Mewujudkan Pemilihan Umum Yang Demokratis Dalam Perspektif Hukum Progresif*, Disertasi, Universitas Diponegoro Semarang, 2013.
- John Rawls, *Theory of Justice*, Cambridge, Mass: The Belknap of Harvard University Press, 1971.
- Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-pilar Demokrasi*, Jakarta: Konstitusi Press, Cetakan Kedua, 2005.
- \_\_\_, *Hukum Acara Pengujian Undang-Undang*, Jakarta: Konstitusi Press, Cetakan Kedua, 2006.
- \_\_\_, "Partai Politik dan Pemilihan Umum Sebagai Instrumen Demokrasi", *Jurnal Konstitusi*, Vol. 3, Nomor 4, Desember 2006.
- Jose Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy*, New York: Cambridge University Press, 2007.
- Kementerian Komunikasi dan Informatika Republik Indonesia, "DPR, Pemerintah dan Penyelenggara Sepakati Pemilu Serentak 14 Februari 2024," diakses 6 Maret 2022, <https://kominfo.go.id/content/detail/39588/dpr-pemerintah-dan-penyelenggara-sepakati-pemilu-serentak-14-februari-2024/0/berita>.
- Keterangan Presiden/Pemerintah bertanggal 3 Oktober 2019, yang dibacakan pada Sidang Pleno di Mahkamah Konstitusi, bertanggal 3 Oktober 2019 terhadap perkara Nomor 37/PUU-XVII/2019.
- Keterangan Tambahan Presiden/Pemerintah, bertanggal Desember 2019, di sampaikan ke Mahkamah Konstitusi, pada tanggal 7 Januari 2020 dalam perkara Nomor 37/PUU-XVII/2019.
- Khairul Fahmi, "*Konstitusionalitas Desain Kesenjangan Pemilihan Umum*", Keterangan Ahli Pemohon, bertanggal 13 Januari 2020, yang dibacakan pada persidangan Pleno Mahkamah Konstitusi pada tanggal 13 Januari 2020 pada perkara Mahkamah Konstitusi Nomor 55/PUU-XVII/2019, bertanggal 26 Februari 2020.
- Kontributor: Syamsuddin Haris (Editor), Ramlan Surbakti, Ikrar Nusa Bhakti, Saldi Isra, Kuskridho Ambardi, Nico Harjanto, Didik Supriyanto, Sri Nuryanti, Sri Yanuarti, Moch. Nurhasim, *Pemilu Nasional Serentak 2019*, Yogyakarta: Pustaka Pelajar, Cetakan I, 2016.
- Mashudi, *Pengertian-Pengertian Mendasar Tentang Kedudukan Hukum Pemilihan Umum di Indonesia Menurut Undang-Undang Dasar 1945*, Bandung: Penerbit Mandar Maju, Cetakan Pertama 1993.

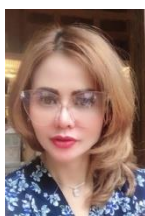
- Mietzner, M. (2010). Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court. *Journal of East Asian Studies*, 10(3), 397-424. doi:10.1017/S1598240800003672.
- Mikko Mattila, "Why Bother? Determinants of Turnout in the European Elections," Dalam *Electoral Studies* 22, 2003.
- Miriam Budihardjo, (ed), *Masalah Kenegaraan*, Jakarta, Gramedia, 1982.
- Muhamad Lukman Edy, *Bunga Rampai Undang-Undang Pemilu*, Jakarta: PT. Wahana Semesta Intermedia, Cetakan I, November 2017.
- M. Amien Rais, "Pengantar" dalam *Demokrasi dan Proses Politik*, Jakarta: LP3ES, 1986.
- M. Guntur Hamzah, dalam makalah berjudul "Mahkamah Konstitusi, Pemilu Serentak, dan Konsolidasi Demokrasi
- Nurcholish Madjid, *Indonesia Kita*, Jakarta: PT. Gramedia Pustaka Utama bekerja sama dengan Universitas Paramadina Jakarta dan Perkumpulan Membangun Kembali Indonesia, 2003.
- Padmo Wahyono, *Penerapan Pancasila Dalam Demokrasi Di Indonesia*, Jakarta: BP. 7 Pusat, 1984.
- Pojok Wacana, *Pengertian Demokrasi Prosedural Menurut Joseph Schumpeter*, <http://www.pojokwacana.com/pengertian-demokrasi-prosedural-menurut-joseph-schumpeter/>.
- Prayuda, R., Warsito, T. and , S. (2021), "Problems faced by ASEAN in dealing with transnational drug smuggling in Southeast Asia region", *Foresight*, Vol. 23 No. 3, pp. 353-366. <https://doi.org/10.1108/FS-12-2019-0106>.
- Putusan Mahkamah Konstitusi Nomor 14/PUU-XI/2013, bertanggal 23 Januari 2014, perihal Pengujian Undang-Undang Nomor 42 Tahun 2008 tentang Pemilihan Umum Presiden dan Wakil Presiden.
- Putusan Mahkamah Konstitusi Nomor 37/PUU-XVII/2019, bertanggal 26 Februari 2020, perihal Pengujian Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum.
- Ramlan Surbakti, Keterangan sebagai Ahli pada Sidang Pleno Mahkamah Konstitusi perkara Nomor 37/PUU-XVII/2019, pada tanggal 13 Januari 2020.
- Reinhold Zippelius, *Allgemeine Staatslehre. Politik-Wissenschaft*, Munchen: C.H., 1973.
- Ria Casmi Arrsa, *Pemilu Serentak dan Masa Depan Konsolidasi Demokrasi*, Jakarta: PT. Semesta Rakyat Merdeka, Cetakan I, Oktober 2017.
- Robert A. Dahl, *Democracy and Its Critics*, New Haven/London: Yale University Press, 1989.
- Seputar Pengetahuan, *Pengertian Pemilu, Tujuan, Fungsi, Asas, Bentuk, & Sistemnya*, <https://www.seputarpengertian.co.id/2017/09/pengertian-pemilu-tujuan-fungsi-asas-bentuk-sistem.html>.
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Raja Grafindo Persada, 1985.

- Soerjono Soekanto, di dalam penelitian pada umumnya dikenal tiga jenis alat pengumpulan data, yaitu studi dokumen atau bahan pustaka, pengamatan atau observasi, dan wawancara, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2008.
- South-East Asian and Pacific Conference of Jurists, Bangkok, February 15-19, 1965, "The Dynamic the Rule of Law in the Modern Age", Bangkok: International Commission of jurists, 1965.
- Sri Soemantri, "Demokrasi, Hukum", Makalah, *Seminar Perkembangan Demokrasi di Indonesia Sejak 1945*, Widyagraha-LIPI, 24-25 Mei 1993.
- Suara.com, <https://www.suara.com/news/2019/05/16/165533/update-petugas-kpps-meninggal-527-orang-11239-orang-sakit>.
- SWR de A. Samarasinghe, *Democracy and Democratization in Developing Countries*, Development Studies Program, The American University & Institute for International Research, Srilangka, 1994.
- Tatiana Kostadinova dan Timothy J. Power, "Does Democratization Depress Participation? Voter Turnout in the Latin American and Eastern European Transitional Democracies," Dalam *Political Research Quarterly* 60 (3), 2007.
- Telan Banyak Korban Jiwa, Ombudsman akan Evaluasi Pemilu Serentak 2019, Liputan6.com, 1 Mei 2019, pukul 08.36 WIB.
- Tesis Mark Pyne, *Democracies in Development: Politics and Reform in America Latin*, 2002. Lihat dalam Tardjo Ragil, *Eksperimentasi Pemilu Serentak*, <https://gagasanhukum.wordpress.com/2016/09/29/eksperimentasi-pemilu-serentak/>.
- Thomas Sebelius, *The Tug-of-War between Presidents and Prime Ministers: Semi Presidentialism in Central and Eastern Europe*, Orebro Studies in Political Science 15, 2006.
- T. Koopmans, *Compendium van het Staatsrecht*. Deventer: Kluwer, 1987.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Usep Hasan Sadikin, *Belajar dari Pemilu "Serentak" Pertama Filipina*, <http://rumahpemilu.org/belajar-dari-pemilu-serentak-pertama-filipina/>, Posted on May 13, 2016.
- Wilma Silalahi, *Negara Hukum, Demokrasi, dan Pemilu*, Lampung: CV. Anugrah Utama Raharja, Cetakan Pertama, Maret 2019.
- \_\_\_, *Desain Penyelesaian Sengketa Pemilu Serentak*, Depok: Rajawali Pers, Ed. 1, Cet. 1, 2019.
- \_\_\_, *Model Pemilihan Serentak dan Peranan Komisi Pemilihan Umum Pada Pemilihan Serentak Tahun 2024*, Jurnal APHTN-HAN, Vol. 1, No. 1, Edisi Januari 2022.
- Yasonuri Sone, *Criteria of Demokrasy and Democratization problems*, Jepang: Keio University, 1994.

Yogi Prabow (salah seorang presidium Mer-C), Sekretariat Mer-C, Kramat Lontar, Jakarta Pusat, Merdeka.com, Jumat, 3 Mei 2019.

Yudi Latif, *Demokrasi Berkebudayaan dan Budaya Berdemokrasi (bag. 5)*, Aktual, <https://aktual.com/demokrasi-berkebudayaan-dan-budaya-berdemokrasi-bagian-5/>.

#### Writer biography



Author, Dr. Wilma Silalahi, S.H., M.H., obtained his Bachelor of Laws (S1) at the Faculty of Law, University of North Sumatra, Medan in 1999. Completed his Masters in Law (S2) at the Postgraduate Program at the University of Indonesia, Jakarta in 2012. Completed his Doctoral education (S3) in the Postgraduate Program at Diponegoro University, Semarang in 2019 with a graduation predicate or "cum laude" graduation.

In 2017, he participated in the Judicial Training Program ProCuria at The Hague University of Applied Science, The Netherlands. In 2019, as a speaker at a joint conference between the Constitutional Court of the Republic of Indonesia and The Hague University of Applied Science, the Netherlands.

Has attended training, training, training, seminars, workshops in various activities, as well as being a resource person and speaker at various activities. Books, journals, papers, articles by authors, both national and international, the authors produce.

Since 2003 until now, he has worked at the Constitutional Court of the Republic of Indonesia as a Substitute Registrar.