



## Harmonization of Laws and Regulations Simultaneous General Elections in Indonesia

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### **Abstract**

The urgency of harmonization of general election laws and regulations deserves the attention of all parties. The problems in this study are 1) harmonizing the laws and regulations for simultaneous general elections in Indonesia and 2) the efforts made in harmonizing the laws and regulations for simultaneous general elections in Indonesia. The research method used is normative juridical research. The source of data used in this study consists of secondary data. Results show that 1) there is a lack of harmony between KPU Regulations (PKPU) and Bawaslu Regulations (Perbawaslu) throughout the entire process of conducting simultaneous general elections in Indonesia, which leads to inconsistencies in the roles and responsibilities of election organizers, law enforcement, and election administrators. Many rules in the Election Law No.7 of 2017 and the Pilkada Law No.10 of 2016 do not guarantee legal certainty. There are still rules that are inconsistent with each other—for example, the term for the transfer voter list. In the Election Law, the term used is the Additional Voters List (DPTb). However, in the Pilkada Law, the term Transfer Voter List (DPPH) is used. The same applies to voters who fulfill the requirements but have not yet been included in the Final Voters List (DPT). The Election Law uses the term Special Voter List (DPK), while the term in the Pilkada Law is DPTb. To call the same condition, but the times are different. In addition, there is also a legal vacuum in the Election Law which causes a bias in interpreting the norms in the Election Law. 2) Efforts Made to Harmonize Simultaneous General Election Laws and Regulations in Indonesia First, Harmonization is carried out by promoting the newest advances and maximizing the use of information system technology to ease the conduct of elections and boost voter turnout. Second, harmonization is done to keep harmony, stability, and unity in the idea of laws and regulations as a system so that laws and regulations work correctly. Third, guarantee that the process of forming laws and regulations is carried out according to the principle of legal certainty.

**Keywords:** *Harmonization; Laws and Regulations; Simultaneous General Elections*

## **Introduction**

Indonesia is a free country based on democratic principles based on the people's wishes written in the Constitution (Ferza & Aulia, 2020); as stated unequivocally (clearly), the provisions of Article 1 paragraph (2) of the 1945 Constitution state that sovereignty is in the people's hands (Niswaty et al., 2020). It is exercised according to the Basic Law Indonesia, during its reign, adhered to the teachings of democracy and democracy (Syafei & Darajati, 2020).

For modern democracies, simultaneous elections are the primary method that must be present in the governance and government formation stages (Erawati, 2020). Elections are the primary form of people's freedom and a complete record of popular participation in government (Sukhobokova, 2018). In today's development, indirect democracy or representative democracy is an application of political reality (Iriani et al., 2021). One of the prerequisites for obtaining suffrage is creating a legal system that must be structured in an unambiguous, understandable, and transparent way and be able to highlight all the necessary elements of the electoral system, be sure—democratic elections (Widodo, 2021).

The exercise of popular sovereignty cannot be separated from elections. Law Number 7 of 2017 concerning General Elections is a legal policy issued by the state, in this case, the government and the DPR. Such legal guidelines are given to realize the state's goals (Rannie, 2020).

Concerning General Elections, Law Number 7 of 2017 raises several questions and concerns that merit more analysis (Arifin & Hidayat, 2019). It is essential to know the true purpose of Law Number 7 of 2017 concerning General Elections (Iriani et al., 2021). The numerous election regulations are just one example of how this addresses issues that have arisen after earlier legal instruments were enacted (Bandiyah & Ginting, 2020). Law Number 7 of 2017 concerning General Elections has weaknesses that can be seen from the advantages and disadvantages in society. The existence of pros and cons in the community related to several principles contained in Law Number 7 of 2017 concerning General Elections shows that the law still has weaknesses (Kharima Nadya, 2018).

For administrative purposes, it is more critical that Law No. 2 of 2020, which will become law and become Law (Election Law), amend Law No. 1 of 2015, which replaced Law No. 1 of 2014, concerning the election of governors, administrators, and mayors (Election Law) (Gumbira & Wiwoho, 2019). This can be reconciled from handling administrative violations of the Election Law through the decision process and the provision of decision products, while with the Election Law through a process of clarification and verification of results through recommendations to the KPU or election participants for follow-up (Ulum, 2019). Furthermore, in the dispute resolution process in the Election Law through mediation, the decision produces a verdict (Nur et al., 2020). In the Election Law, through closed deliberation and then open deliberation. The difference between the Election and Election Law is a small part of the things that must be harmonized in the waiting period for 2024 (Samosir, 2021). Many more things must be discussed to make improvements and reconcile (Prasetio et al., 2020).

Regarding Law Number 2 of 2011 concerning Political Parties (Political Parties Law), several problems must be corrected (Wasisto, 2021). Until now, the Political Party Law has not received much attention to be reformed (Harun et al., 2021). The Government and the House of Representatives changed the Election Law and the Election Law several times (Januwarso et al., 2022). Still, they forgot to make changes related to one of the pillars of democracy, namely political parties (political parties) (Gunarto & Hurriyati, 2020).

The modernization of Indonesia's political system is expected to improve the quality of democracy from top to bottom (Antlöv & Cederroth, 2021). A good and robust design can be used for a long time and checked regularly following the development of a strong society (Khalyubi & Perdana,

2021). For this reason, the reconciliation of the electoral system, regional elections, and political parties need to be carried out during the waiting period before 2024 (OSBIN, 2021).

### **Method**

Research this thesis using normative juridical methods. The primary data in this study are secondary, using data obtained from literature studies.

### **Result and Discussion**

#### **1. Harmonization of Simultaneous General Election Laws and Regulations in Indonesia**

When compared to Law No. 2 of 2020, which will amend Law No. 1 of 2015, which replaced Law No. 1 of 2014 regarding the Election of Governors, Administrators, and Mayors, the Government Regulation Code, based on Law No. 7 of 2017 concerning General Elections (Election Law), is more urgent from an organizational standpoint. This can be reconciled from handling administrative violations of the Election Law through the decision process and the provision of decision products, while with the Election Law through a process of clarification and verification of results through recommendations to the KPU or election participants for follow-up. Furthermore, the dispute resolution process in Election Law through mediation, then the decision produces a verdict, while in Election Law, open deliberation produces a judgment. The difference between the Election and Election Law is a small part of the things that must be harmonized in the waiting period for 2024. Many more things must be discussed to make improvements and coordinate. As long as these other laws and regulations do not supersede Law No. 7 of 2017 as higher legislation in scope and, more specifically (*lex specialist*), their continued validity and existence after the passage of that law are irrelevant (*lex specialis derogate legi general*).

Harmonization of laws and regulations is an effort to harmonize and harmonize goals, strategies, and guidelines by referring to the essential Laws, namely the 1945 Constitution and laws and regulations governing good governance. Therefore, it must follow changes in the Constitution and rules based on good governance.

Elections are an essential part of democracy. The basis for general elections in Indonesia is Pancasila democracy, clearly stated in the Preamble to the 1945 Constitution. Pancasila is the primary basis for the agreement on the establishment of the state and is part of the inviolable Preamble to the 1945 Constitution. It was amended for any reason. Apart from being a *modus vivendi*, it can also be regarded as a state “birth certificate” that ensures the continuity of the Indonesian nation and state and its integrity or integration that is always stable. The Constitution, as the basis of the rules of political games, regulates democratic governance procedures that guarantee harmony between the nation and government. Democracy is passed through the election or election of confident public leaders honestly and fairly.<sup>1</sup> The implementation of simultaneous elections combines legislative elections (elections for members of the DPR, DPD, and DPRD) and presidential and vice-presidential elections.

As for whether the conduct of the presidential and vice presidential elections held after the parliamentary elections was unconstitutional, the Constitutional Court, in its ruling this time, changed its mind. Previously, in Decision No. 51-52-59/PUU-VI/2008, dated February 18, 2009, the Constitutional Court held that Article 3 paragraph (5) of Law No. 42 of 2008 was not unconstitutional because it was a practice that could be contrary to legal logic. Logic dictates that the MPR be established before the President and Vice presidents can be chosen for their positions. So the first election of the DPR, DPRD,

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<sup>1</sup>Moh. Mahfud MD., 2018, *Constitution and Law in Controversy Issues*, Jakarta: Rajawali Pers pp. 39-40.

and DPD is logical. The Constitutional Court calls this a desuetude or constitutional contract (customary) so as not to conflict with the Constitution.

Therefore, there is still a lack of harmonization among Indonesia's election rules and regulations, particularly regarding the roles and authorities of election organizers and law enforcement officers. And coordination. KPU Regulations (PKPU) and Bawaslu Regulations (Perbawaslu) at each stage. Many laws in the Election Law No. 7 of 2017 and the Election Law No. 10 of 2016 do not guarantee legal certainty. There are still laws that are not in line with each other—for example, a list of word transfer selectors. In the Electoral Law, the term used is the Supplementary Voter List (DPTb). However, in the Election Law, the term Moving Voter List (DPPH) is used. The same applies to eligible voters but not yet on the Permanent Voters' Register (DPT). The Election Law uses the term Special Voter List (DPK), while the term in the Election Law is DPTb. Calling the same situation, but the conditions are different. This becomes an issue when the 2018 and 2019 regional elections and the 2024 and 2024 regional elections fall on the exact dates. In addition, there is also a legal vacuum in the Election Law that creates interpretation bias. Rules in the Electoral Law. The issue of verifying the governance of members of political parties. Constitutional Court Decision No.55/PUU-XVIII/2020 ordered that political parties crossing the parliamentary threshold in the last election did not need to review the required documents correctly. This can create injustice for political parties that did not pass the parliamentary point in the 2019 elections and new political parties. Since it is impossible to confirm the authenticity of political party members who cross the threshold, the names of party members who do not reach the parliamentary threshold will be ruled ineligible if many pass and do not pass the point. There are weaknesses in formulating laws and regulations to implement simultaneous elections, so there is a need for harmonization between the Election Law and the Election Law (UU). In addition, there is now a discrepancy between rules. Like the violation provisions and enforcement mechanisms, there are normative problems in regulation, norm vacuum, ambiguity, inconsistency, contradictions, and lack of protectiveness. Compared to the Election Law In Law Number 7 of 2017 concerning General Elections, only the giver occurs.

The preparations for the 2024 regional elections still use the same rules as the 2019 General Election. This means that the 2024 Regional Elections will continue to use Law No. 7 of 2017 concerning General Elections and Law No. 10 of 2016 concerning Rules for Government Regulations instead of Law No. 1 of 2014 concerning the Election of Governors, Executives, and Mayors. The Constitutional Court's decision must be followed by a policy-making process based on solid evidence and data based on the implementation narrative. Therefore, the burden of making a choice can be identified first, and measures to anticipate risks can be considered in case of undesirable things. Then what is not too important is the need to evaluate the integrity issues of election organizers or participants, for example, by strengthening the registration system, as an effort to realize simultaneous elections with integrity in the future.

## **2. Efforts Made to Harmonize the Laws and Regulations for Simultaneous Elections in Indonesia**

Efforts to Harmonize the Law and Order of Simultaneous Elections in Indonesia, as well as comply with the provisions of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Laws and Regulations, Perpu Number 1 of 2022 concerning changes to the law. Not. Seven the Year 2017 (PERPPU Election), that is, together with various regulations or decisions regarding elections in Indonesia, election organizers are the basis for the success or failure of the implementation, namely:

*First*, reconciliation is carried out by encouraging the latest achievements and increasing the use of information system technology to facilitate elections and increase public participation because laws and regulations are an essential part of the legal system. Legislation as a system or subsystem of a more extensive system must undoubtedly meet the traits of being linked and

interdependent and comprising a whole, in addition to other characteristics. In the method of laws and regulations compiled departmentally, these characteristics can be known from the provisions of Article 2, Article 3, Article 7 paragraph (5) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning Legal Legislatures.

*Second*, reconciliation is carried out to maintain consistency, stability, and unity of the concept of laws and regulations as a system so that laws and regulations run effectively. The law can be tested (judicial review) materially and formally.

Article 24 Article (1) of the Constitution of the Republic of Indonesia of 1945, among others, states that the Supreme Court has the authority to test laws and regulations based on laws against statutes. Then Article 24 C paragraph (1) says that the Constitutional Court can examine laws contrary to the Constitution.

*Third*, ensure that the process of forming laws and regulations is carried out following the principle of legal certainty. The method of forming laws and regulations must be based on regulations to create better laws and regulations that meet various requirements related to systems, regulations, procedures for delivery and discussion, technical preparation, and implementation by opening access to the public to participate. The law as a written law is of great importance in our legal system, and binding society must be specific so that the consequences of certain appropriate or illegal actions can be predicted. Thus, laws and regulations can be an essential means of maintaining cooperative relations between citizens and between citizens and the government to achieve common goals in their implementation, but in an orderly and systematic manner.

## **Conclusion**

Due to a severe lack of synchronization between the KPU Regulations (PKPU) and the Bawaslu Regulations (Perbawaslu), the duties and authorities of election organizers, law enforcement, and the synchronization of these two sets of regulations at each stage of an Indonesian simultaneous general election are not unified. Many rules in the Election Law No.7 of 2017 and the Election Law No.10 of 2016 do not guarantee legal certainty. There are still rules that are inconsistent with each other. Constitutional Court Decision No.55/PUU-XVIII/2020 ordered that political parties that had passed the parliamentary threshold in the previous elections did not need to be subjected to factual verification of the required documents. This can cause injustice to political parties that did not pass the parliamentary threshold in the 2019 general elections and new political parties.

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